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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1894.

No. 199.

JOHN D. BEARDSLEY, APPELLANT,

vs.

THE ARKANSAS AND LOUISIANA RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED JUNE 12, 1894.

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1 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas.

Be it remembered that at a circuit court of the United States of America in and for the western division of the eastern district of Arkansas, begun and holden on Monday, the eleventh day of April, anno Domini one thousand eight hundred and eighty-seven, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, on October 22, 1887:

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY, ARKANSAS AND LOUISIANA RAILWAY, and The St. Louis, Iron Mountain and Southern Railway Company.

Comes the complainant, by Jones and Martin, Esqrs., his solicitors, and files herein his supplemental bill; which supplemental bill is in the words and figures, to wit:

2 In the Circuit Court of the United States, Eastern District of Arkansas.

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY, ARKANSAS AND LOUISIANA RAILWAY Company, St. Louis, Iron Mountain & Southern Railway Company.

To the judges of the circuit court of the United States for the eastern district of Arkansas, in equity:

Paul F. Beardsley brings his supplemental bill against John D. Beardsley, the Arkansas and Louisiana Railway Company, and the St. Louis, Iron Mountain and Southern Railway Company; and thereupon your orator complains and says that he filed his original bill against the defendants John D. Beardsley and the Arkansas and Louisiana Railway Company in this court March 11, 1886, wherein he prayed for the enforcement of a trust therein specifically set forth and for other relief, as stated in said original bill; and your orator further
3 shows that since the filing of said original bill and the rendition of the decree of this court in said cause the facts hereinafter set forth have occurred or have come to the knowledge of your orator and make the filing of this supplemental bill a matter of necessity for the protection and preservation of your orator's right, as fixed and determined by said decree—that is to say, that heretofore, to wit, on the 11th day of June, 1885, the defendants John D. Beardsley and associates and the Arkansas and Louisiana Railway Company entered into a written contract with the defend-

hand and notwithstanding the fact, which your orator charges to be true, that one of the general attorneys and an auditor of the defendant Saint Louis, Iron Mountain and Southern Railway Company in the month of April, 1887, inspected the books of said Arkansas and Louisiana Railway Company, which showed these earnings and balance, no effort whatever has been made by said Saint Louis, Iron Mountain and Southern Railway Company to have said net earnings or cash balance applied to the payment of the said indebtedness, but the defendant
11 John D. Beardsley has been allowed to use the same for his own purposes, as will be hereinafter more fully and at large set forth and stated, and all this in total disregard of your orator's oft-repeated protests and his oft-repeated demands that these earnings and cash balance should be applied towards the extinguishment of the indebtedness aforesaid in accordance with the terms of said settlement contract of June 11th, 1885; and your orator further charges that since the commencement of this suit and since the rendition of the decree herein the defendant John D. Beardsley, with the full acquiescence and assistance of the defendant Arkansas and Louisiana Railway Company, and without objection from the St. Louis, Iron Mountain and Southern Railway Company, in plain violation of the terms of the settlement contract aforesaid of June 11th, 1885, and in perfect contempt of your orator's rights as determined and defined by said decree, as well
12 as in contempt of said decree and this honorable court, has acted with respect to the property and earnings of the said Arkansas and Louisiana Railway Company in the manner following—that is to say, he has used out of the earnings of said Arkansas and Louisiana Railway Company, which should have been paid to said St. Louis, Iron Mountain and Southern Railway Company upon account of the indebtedness aforesaid, large sums of money in payment of the personal expenses of himself and others in attempting to negotiate loans and for other expenses incurred in arranging for the building of a railroad in the State of Louisiana, which he claims is in no manner connected with the Arkansas and Louisiana Railway Company, and in which he claims neither the said last-named railway company nor your orator has any interest whatever, and has charged the same to the construction ac-
13 count of said Arkansas and Louisiana Railway Company.

He has used of the said earnings other large sums of money in paying his attorney's fees and their travelling expenses and hotel bills and the travelling expenses and hotel bills of his witnesses and his own personal expenses and costs accrued in and about his defence of the original bill filed by your orator in this cause, and has charged the same to the legal-expense account of said Arkansas and Louisiana Railway Company. He has used of said earnings other large sums of money in payment of telegraphic dispatches to New York and elsewhere upon business in no manner connected with said Arkansas and Louisiana Railway Company, and in which it had no interest, and has charged the same to the expense account

of said Arkansas and Louisiana Railway Company, and at
14 the same time and until now has compelled your orator to pay full rates for all of his telegraphic messages.

He has used of said earnings the sum of one hundred and twenty dollars to pay to his own wife one year's interest, alleged by him to be due on January 1st, 1887, upon twelve hundred dollars which had been borrowed from her January 1st, 1886, and returned to her on the 30th of March, 1886, as shown by and so entered upon the books of said railway company, and has charged said one hundred and twenty dollars to the interest account of said Arkansas and Louisiana Railway Company. He has used and is still using, as your orator is informed and believes and so charges, all of the earnings of said Arkansas and Louisiana Railway Company which were on hand and as fast as they have accrued in constructing a railroad in the State of Louisiana, which he claims has no connection whatever with said Arkansas and Louisiana Railway
15 Company, and in which he claims neither it nor your orator has any manner of interest whatever.

He has taken from said Arkansas and Louisiana Railway Company and carried to the State of Louisiana and out of the jurisdiction of this court, to be used in the construction of his aforesaid railroad in that State, other valuable property belonging to said Arkansas and Louisiana Railway Company, consisting of scrapers, wheel scrapers, iron cars, locomotive engine, tools, &c., &c. He has devoted the greater part of his time and personal attention, since shortly after the commencement of this suit and until now, to his own private business in arranging for the construction and in constructing his aforesaid railroad in the State of Louisiana, and has charged all of his expenses in so doing to said Arkansas and Louisiana Railway Company, and has taken the same out of the earnings thereof, and has at the same time regularly drawn out of said earnings a salary of two hundred dollars per month for
16 his own use as general manager of said railway company.

By his reckless disregard of law and the rights of others he as involved said Arkansas and Louisiana Railway Company in needless and expensive lawsuits on account of unjust and unlawful discriminations between the citizens of the towns of Old and New Nashville, to compromise which said railway company was compelled to pay out large sums of money, amounting to upwards of three thousand dollars. By the same reckless conduct he has involved said railway company in other expensive and needless lawsuits with other citizens of Howard county on account of other unjust and unlawful discriminations, which lawsuits are now pending in the circuit court of said Howard county and to defend which said railway company will be compelled to expend other large sums of money.

17 He has by his reckless course and unwise management so embittered many of the citizens and merchants of Hempstead, Howard, Sevier, and Pike counties, which comprise the only sources from which the revenues of said railway company have been and must of necessity be drawn, that they have refused to transport

their produce and merchandise over said railway and have hauled and are still hauling the same with wagons along the dirt roads to and from the towns of Hope and Fulton, on the St. Louis, Iron Mountain and Southern railway.

He constructed a telephone line and put up telephone instruments from the town of Washington to the town of Columbus, a distance of ten miles, entirely outside of the line of the Arkansas and Louisiana railway and almost at right angles thereto and of no earthly use or benefit to said railway, and used the em-
18 ployees & the earnings of said railway company to construct and pay for the same, and afterwards, of his own motion, sold the same, including three telephone instruments, to a personal friend of his for less than one-third of the actual cost of construction, and this in contempt of the decree of this honorable court in this cause, in this, that said instruments were the property of said Arkansas and Louisiana Railway Company, in which your orator owns a one-third undivided interest under said decree.

He has at large expense employed an engineer and a corps of assistants to make two useless surveys from Nashville to Centre Point, a distance of nine or ten miles, and paid for the same out of the earnings of said Arkansas and Louisiana Railway Company, in open violation of the terms of said settlement contract of June 11th, 1885, which provides that none of said earnings shall be
19 used for any new work without the consent in writing of all the parties to said contract.

He has clouded the title to a large portion of the lands which under the decree rendered in this cause belong to said Arkansas and Louisiana Railway Company and in which your orator has an undivided one-third interest by selling the same to persons who are ignorant of the terms of said decree and by putting them in possession of said lands and executing and delivering to them deeds and bonds for title instead of conveying said lands to said railway company in accordance with the decree of this court and in open violation and contempt of said decree.

Instead of applying the net earnings of said Arkansas and Louisiana Railway Company to the payment of its indebtedness to the St. Louis, Iron Mountain and Southern Railway Company
20 due as aforesaid, in accordance with the terms of said settlement contract of June 11th, 1885, he has used said earnings, except those expended in the manner hereinbefore stated, in making purchases of useless and expensive articles not needed for the operation of said Arkansas and Louisiana Railway Company, such as a steam shovel and plow, at a cost of thirty-four hundred and sixty dollars.

He also expended of said earnings other large sums in paying lobby fees to influence State legislation in violation of law, and other large sums for political purposes, in advancing the private interests of his political friends, in political canvasses, and other large sums in making presents to his friends, among them William H. Carruth, the president and treasurer of said Arkansas and Louisiana Railway Company, to whom he presented a clock bought for about $38.00,

thirty-eight dollars, out of said earnings, and has charged the
21 same to the construction account of said railway company.

He has used said Arkansas and Louisiana railway for the free transportation of large numbers of his political and personal friends in the political campaign of 1886 in Hempstead and Howard counties, and since then and until now has compelled your orator to pay full fare for himself and family in riding upon said railroad. He has used said railway for the free transportation and expressage of his own personal property of every kind, and at the same time has compelled your orator to pay full freight and express charges for everything he has had transported or expressed thereon. He has purchased salt, coke, and shingles in large quantities for his own account, and has transported the same free of charge over the said railway and sold the same, partly to said railway company and partly to individual purchasers, at large profits, which he has
22 appropriated to his own account, thereby using this public carrier as a vehicle for his own private purposes as a merchant unjustly discriminating in his own favor, in violation of law, and laying said railway company liable to expensive and grievous lawsuits at the instance of other merchants in that section of country. He has refused to permit a telephone company which owns and operates a telephone line from Antimony city via Centre Point to Nashville, a distance of about thirty-five (35) miles, to connect with the telephone line of the Arkansas and Louisiana Railway Company at Nashville, except upon the condition that said telephone company would run its line through the town of Old Nashville to the town of New Nashville without putting any telephone instrument in said old town, which condition said company refuses to accede to as being an unreasonable, un-
23 just, and unlawful discrimination against said old town, as well as an unreasonable, unlawful, and unjust demand upon the part of the said defendant John D. Beardsley, and by reason of which the Arkansas and Louisiana Railway Company has lost the large benefits which would otherwise accrue to it from such telephonic connection, and has, moreover, made itself liable to vexatious and expensive lawsuits which may grow out of such unreasonable, unjust, and unlawful conduct on the part of the said general manager.

And in addition to all this outrageous, unlawful, and unwarrantable conduct upon the part of the said defendant John D. Beardsley, as general manager of said defendant The Arkansas and Louisiana Railway Company—

24 He has since about the fifteenth day of June, 1887, refused to permit your orator to look into or inspect any of the books of the said railway company, and has caused the officers of said railway company, including the president and treasurer, William H. Carruth, and the auditor, H. H. Wheeless, to so refuse.

And your orator charges that he repeatedly and at reasonable hours made demand in person upon said officers for permission to inspect said books, and on the tenth day of August, 1887, he made

a demand in writing upon said president and treasurer and upon said auditor for such permission, and they both positively and peremptorily refused, stating that they would not grant such permission without an order from said John D. Beardsley for that purpose, and they further refused to make such refusal in writing, although your orator requested each of them so to do.

25 And your orator further charges that at the time of making such demand in writing upon said president and treasurer, William H. Carruth, he called the attention of said president and treasurer to sections 5506–'7 of Mansfield's Revised Statutes of Arkansas, whereby it is provided in said section 5506 that the books and records of all proceedings of every railroad company in this State shall be kept at the office or offices of the president, secretary, and treasurer of such company; which said office or officers must be established and kept at some point within this State, and that said books and records shall be open at all reasonable hours for the inspection of any stockholders, and in said section 5507 that a failure to comply with the provisions of said section 5506 shall be a cause of forfeiture of the charter of such company; but the said president and treasurer still refused permission to let your

26 orator look into or inspect any of said books or records, stating as before that he would not grant such permission except upon the order of the said John D. Beardsley, and your orator herewith files the written demands so made by him upon said president and treasurer and said *orator*, marked respectively Exhibit "2" and Exhibit "3," and prays that the same may be taken and considered as part of this supplemental bill; and your orator further charges that such demand and refusal occurred since the said William H. Carruth was instructed in writing by this honorable court that your orator was entitled at all reasonable hours to inspect said books and records, and that he should not be denied the privilege of doing so; and your orator further charges that the said president and treasurer and the said auditor, as well as

27 all the other officers & a majority of the directors of said Arkansas and Louisiana Railway Company, are and have been so completely under the influence and domination of the defendant John D. Beardsley that they obey without question his least as well as his greatest commands, even in open contempt and violation of the orders and mandates of this honorable court.

And by reason of this violation of law and of the orders of this court by the said president and treasurer and the said auditor your orator charges that he has been unable to inspect the books and records of the said railway company, and on that account is unable to make his charges of misconduct and mismanagement of the affairs of said railway company and of the malappropriations of the earnings thereof more definite and certain than he has herein done.

Your orator further charges that in the month of March,

28 1887, the board of directors of said Arkansas and Louisiana Railway Company, in open disregard of said decree of this honorable court & in violation of the injunction therein granted, by a resolution duly passed and entered on the records of said company,

allowed and directed the payment to the said John D. Beardsley of large sums of money, amounting in the aggregate to more than the sum of sixteen thousand dollars, out of the moneys belonging to said defendant, Arkansas and Louisiana Railway Company, upon account of matters which had been adjudicated and determined by this court in this action; that the auditor of said railway company made vouchers for said sums of money and delivered them to said John D. Beardsley, and that said sums were paid him by
29 William H. Carruth, the president and treasurer of said railway company, out of the moneys aforesaid.

And your orator charges that no part of said sum of sixteen thousand dollars was due to said John D. Beardsley; that said directors and said president and treasurer well knew this fact; that said board of directors in making said allowance determined, by a resolution duly passed and entered on the records of said company, that the said John D. Beardsley was the sole owner of certain property which belonged to the Washington and Hope Railway Company, including the bonus notes of citizens to said railway company, and that he should be paid for the same, with interest, and he was so paid in the sum of nearly ten thousand dollars, whereas this honorable court had already determined that all of said property, including said notes, was of the property of the defend-
30 ant Arkansas and Louisiana Railway Company, and that the said John D. Beardsley was not the owner thereof; that said directors in making said allowance also determined, by a resolution duly passed and entered as aforesaid, that said John D. Beardsley should be paid on account of salary alledged to be due him by said Washington and Hope Railway Company, with interest for four and a half years, amounting to the sum of thirty-one hundred and eighty dollars, which was paid to him as aforesaid, whereas this honorable court had already adjudicated this question and had determined that nothing was due on such account; that said directors also, in making said allowance, determined, by a resolution duly passed and entered as aforesaid, that said John D. Beardsley should be paid for three months' salary, with in-
31 terest for three years and four months, in constructing the Arkansas and Indian Territory railway, and he was paid the sum of seven hundred and seventeen dollars on that account, whereas they well knew that said account was false, fraudulent, and unjust, and that this court had already adjudicated the matter, and that nothing was due on that account.

And your orator further charges that said board of directors, at the time of making such fraudulent, unjust, and unwarranted allowances and directing them to be paid as aforesaid, also determined, by a resolution duly passed and entered as aforesaid, that said John D. Beardsley was the sole owner of certain lands which had been donated by the General Assembly of the State of Arkansas to the Washington and Hope Railway Company, and that he should be paid for the same out of the moneys of the defendant
32 Arkansas and Louisiana Railway Company, and that said directors would hereafter adjust said matter, meaning thereby

to say that said John D. Beardsley should hereafter be paid a sum exceeding ten thousand dollars out of said moneys on account of said lands, whereas this honorable court had already determined, as said directors well knew, that said lands were of the property of the defendant Arkansas and Louisiana Railway Company, and that said John D. Beardsley was not the owner thereof, but had been ordered by this court to convey the same and other lands standing in his name to said Arkansas and Louisiana Railway Company; and your orator further charges that in making the aforesaid allowance of more than sixteen thousand dollars to the said John D. Beardsley said board of directors, by a resolution duly passed and entered as aforesaid, allowed and directed
33 the payment to said John D. Beardsley of the sum of twenty-four hundred dollars for services as general manager from August 16th, 1886, till April 1st, 1887, and the same was paid to him by said treasurer of the Arkansas and Louisiana Railway Company out of the moneys belonging to said company, whereas, in truth and in fact, no part of any such sum was due to said John D. and no such services had been rendered by him, but he had been regularly paid the sum of two hundred dollars per month for the whole of said time for all of his services as such general manager, so that said board was without authority to make such an allowance out of the moneys of said railway company, but made the same for the deliberate purpose, as your orator believes and, so believing, charges, of enabling the said John D. Beardsley to wrongfully and fraudulently appropriate the moneys of the Ar-
34 kansas and Louisiana Railway Company to his own use and to your orator's injury, instead of applying them to the payment of the said indebtedness to the defendant St. Louis, Iron Mountain and Southern Railway Company, in accordance with said settlement contract of June 11th, 1885; and your orator further charges that the said John D. Beardsley, during the month of March, 1887, sold and delivered fifty-one per cent. of the entire stock of the Arkansas and Louisiana Railway Company, and also, as your orator is informed and believes, the greater part, if not all, of his interest in the bonds of said Arkansas and Louisiana Railway Company, to Jay Gould, the president of the *president of the* Missouri Pacific Railway Company; that said Missouri Pacific Railway Company has absolute control over the defendant St. Louis, Iron Mountain and Southern Railway Company by virtue of a lease thereof for the whole period of the latter's corporate existence, as
35 your orator is informed and believes, and that the said Jay Gould is the owner of the majority of the stock of said Missouri Pacific Railway Company, as your orator is informed and believes, and also of the stock of the defendant St. Louis, Iron Mountain and Southern Railway Company; and your orator further charges that the said John D. Beardsley, after making said sale of his stock to said Jay Gould, has remaining to him only fifteen and two-thirds per cent. of the stock of said Arkansas and Louisiana Railway Company, which is less than one-half of the amount of stock therein owned by your orator, yet, by virtue of his

contract with said Jay Gould, said stock was not transferred on the books of said railway company, nor was your orator made acquainted with said sale, but the same was kept a secret from your ora-
36 tor and was by accident discovered by him; and your orator further charges that by virtue of the terms of said contract between said John D. and said Jay Gould the said John D. was allowed to retain his interest in the lands and the moneys on hand of said Arkansas and Louisiana Railway Company for the purpose, as your orator believes and so charges, of allowing said John D. to wrongfully and fraudulently appropriate all of said moneys to his own use instead of applying them to the payment of the indebtedness aforesaid to the defendant St. Louis, Iron Mountain and Southern Railway Company, in accordance with the terms of said settlement contract of June 11th, 1885.

And your orator further charges that although vouchers were issued and delivered to the said John D. Beardsley on the 30th day of March, 1887, by the auditor of said Arkansas and Louisiana Railway Company for the full amount of the allowances, covering
37 more than sixteen thousand dollars, so unlawfully and wrongfully allowed to him out of the moneys of said railway company by its board of directors as aforesaid, yet said vouchers were not copied upon the books of said railway company kept by said auditor until the 29th day of June and the 13th day of July, 1887, being after the time your orator was refused permission to inspect said books as aforesaid.

And your orator in fact charges the truth to be that said board of directors, of which the president & treasurer, W. H. Carruth, and the auditor, H. H. Wheeless, and the secretary, R. B. Williams, were then and are now members, has persistently kept secret from your orator any knowledge of any of these aforesaid fraudulent transactions and has conspired with said John D. Beardsley to so wrong and defraud your orator out of any of the benefits arising out of the aforesaid decree of this honorable court in your orator's favor, and he further charges that the defendant St. Louis,
38 Iron Mountain and Southern Railway Company, with full knowledge of all of said frauds, has connived at the same and has assisted to carry out said conspiracy by failing and refusing to enforce the terms and conditions of said settlement contract of June 11th, 1885.

And your orator further charges that on or about the first day of April, 1887, being not a very few days after the said John D. Beardsley had sold his aforesaid stock and bonds to said Jay Gould, the said defendant John D. Beardsley caused his said auditor, Wheeless, to open up a new set of books for said Arkansas and Louisiana Railway Company without carrying forward thereon any of the balances of the old books; that when your orator asked said auditor why this was done (as he did as soon as the discovery was made by him) said auditor replied that he was not at liberty to give
39 your orator the needed information, but would refer him to the general manager, John D. Beardsley, who was then in the city of New York, and that very shortly after this inquiry

was made by your orator of said auditor, and after the said John D. Beardsley had returned, your orator was refused permission to inspect any of said books and is still so refused.

And your orator further charges upon information and belief that the said defendant John D. Beardsley, since the rendition of the decree herein, has openly declared that even if your orator should succeed in having an affirmance of said decree by the Supreme Court of the United States he, the said John D., would still have the said Arkansas and Louisiana Railway Company completely under his control, and that he would manage it as he pleased and in such manner that your orator should
40 have no benefit therefrom, and that he did not recognize your orator as having any interest whatever in said Arkansas and Louisiana Railway Company or in any of its stock, bonds, or property, notwithstanding the decree of this honorable court to the contrary.

And your orator further charges that he has learned since the rendition of the said decree that the following-described lands, which were omitted in said decree and about which your orator then had no information, are the property of the said defendant Arkansas and Louisiana Railway Company and should be subjected to the terms of the said decree the same as the other lands therein described, to wit, the southeast quarter of section thirty, in township nine south, in range 26 west, containing one hundred and sixty acres; the west quarter of the southeast quarter of the southwest quarter and the east half of the southwest quarter of
41 section thirty, in township ten south, in range twenty-five west, containing thirty acres, the same being the town site of the town of Ozan, on the line of the said railway company; that the title to said lands, although equitably in the said Arkansas and Louisiana Railway Company, was taken by said defendant John D. Beardsley in his own name, and that said defendant wrongfully concealed these facts during the pendency of the original action herein; and your orator further charges that since the rendition of the decree of this court in this cause, and after the ascertainment by the court, through its special master appointed for that purpose, of the amount due from your orator to the said defendant John D. Beardsley upon account of your orator's purchase of one-third interest in the said Arkansas and Louisiana Railway Company, to wit, on the 25th day of April, 1887, your orator tendered in payment thereof to John M. Moore, Esq., one of the attorneys of record
42 of the said John D. Beardsley in this cause, for the said John D. Beardsley, the full amount of principal and accrued interest so found and ascertained to be due upon account of said purchase, amounting to the sum of ——; but the said John M. Moore, Esq., as such attorney, refused to accept the same, on which account your orator has been unable to further comply with the terms of the decree.

And your orator further charges that the said defendant John D. Beardsley and all the officers and a majority of the directors of the defendant Arkansas and Louisiana Railway Company hold in

perfect contempt and derision your orator's claim of interest in stock, bonds, and property of said railway company, and treat with equal contempt and derision the decree of this honorable court which fixes and declares the extent of your orator's said claim; that
43 said officers and a majority of the said directors are wholly inimical to your orator and cheerfully and readily obey the behests of the said John D. Beardsley without regard to their nature and have combined and confederated together so as to allow the said John D. to manage the said railway and all its property in his own interest and in such manner as to effectually destroy your orator's interest therein; that the defendant St. Louis, Iron Mountain and Southern Railway Company, although requested by your orator to enforce the terms of the aforesaid settlement contract of June 11th, 1885, with respect to the application of the net earnings of said Arkansas and Louisiana Railway Company to the payment of its indebtedness aforesaid, and although your orator has notified one of the attorneys of said St. Louis, Iron Mountain and Southern Railway Company that he would not consent to the application of such earnings to any other purpose than to the payment of
44 such indebtedness, still neglects and refuses to enforce such application and permits without objection the use of such earnings by the said John D. Beardsley in the manner hereinbefore stated, so that your orator stands at the mercy of merciless adversaries and without hope of relief or redress except through the further intervention of this honorable court, for he charges the truth to be that if the present management of the Arkansas and Louisiana Railway Company is continued it will be but a matter of time, and a very short time at that, when all of the property, stock, and bonds of said railway company which can be found will be insufficient to pay the rapidly increasing indebtedness due said St. Louis, Iron Mountain and Southern Railway Company, and the fruits of your orator's hard-earned labor will avail him nothing.

Wherefore, in consideration of the premises, your orator prays that a receiver be appointed to take charge and control of
45 said Arkansas and Louisiana railroad, and of all the books, papers, records, and property of every kind belonging to or connected therewith; that said receiver be fully empowered and commanded to operate said railway in the usual manner under the orders and direction of this court; to take charge and possession of all the earnings of said railway and, after paying the necessary operating expenses, to pay all the surplus into the treasury of the St. Louis, Iron Mountain and Southern Railway Company, in accordance with the aforesaid settlement contract of June 11th, 1885, taking proper receipts for each of such payments; that said receiver be so empowered and commanded until all the indebtedness of said Arkansas and Louisiana Railway Company to said St. Louis, Iron Mountain and Southern Railway Company be fully paid and discharged; that the said defendants, John D. Beardsley, Arkansas and Louisiana Railway Company, and The St. Louis, Iron
46 Mountain and Southern Railway Company, and each of them, their agents, officers, servants, and attorneys and each

of them, be restrained and enjoined from interfering and intermeddling with or otherwise controlling or attempting to control said Arkansas and Louisiana railway or any part thereof or any of the property or the affairs thereof; that a master of this court be appointed to ascertain and determine what part and how much of the earnings of the said Arkansas and Louisiana Railway Company have been taken by the defendant John D. Beardsley and applied to his own purposes or to purposes foreign to said Arkansas and Louisiana Railway Company or to other improper, fraudulent, or wrongful purpose since the filing of the original bill in this cause, and that said John D. Beardsley be compelled to pay to the receiver to be appointed the whole of such amounts so ascertained by
47 such master, the same to be paid by such receiver upon the indebtedness aforesaid; that said defendant John D. Beardsley be commanded to make, execute, and deliver to the said Arkansas and Louisiana Railway Company a good and sufficient deed of conveyance to the one hundred and ninety acres of land described in this supplemental bill, the same being equitably of the property of the said railway company.

And your orator further prays that the said defendants may set forth a list or schedule and description of every deed, book, account, letter, paper, or writing relating to the matters set forth in this supplemental bill or either of them, or wherein or whereupon there is any note, memorandum, or writing relating in any manner thereto, which now are or ever were in their or either and which of their possession or power, and may deposit the same in the office of the clerk of this honorable court for the usual
48 purposes, and otherwise that the said defendants may account for such as are not in their possession or power.

And your orator prays for such other and further relief as the nature of this case may require and to your honors seem meet.

May it please your honors to grant unto your orator a writ of subpœna, to be directed to the said John D. Beardsley, the Arkansas and Louisiana Railway Company, and the St. Louis, Iron Mountain and Southern Railway Company, thereby commanding them and each of them, at a certain time and under a certain penalty therein to be limited, personally to appear before this honorable court and then and there full, true, direct, and perfect answer make to all and singular the premises, and further to stand to, perform, and abide such further orders, directions, and decree therein as to this honorable court shall seem meet.

JONES & MARTIN,
For Complainant.

49 The complainant, Paul F. Beardsley, expressly waives the making of answer to the supplemental bill under oath or affirmation by the defendants or either of them.

JONES & MARTIN,
For Complainant.

STATE OF ARKANSAS, }
Pulaski County. }

On this 22d day of October, 1887, before me personally appeared Paul F. Beardsley and made oath that he has read the above supplemental bill subscribed by his attorneys and knows the contents thereof, and that the same is true of his own knowledge except as to matters *as* therein stated to be on his information and belief, and as to those matters he believes them to be true.

PAUL F. BEARDSLEY.

Subscribed and sworn to before me this 22d October, 1887.

RALPH L. GOODRICH,
Com'r U. S. Cir. C't, E. D. A.

50 UNITED STATES OF AMERICA, }
Western Division of the Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the western division of the eastern district of Arkansas, begun and holden on Monday, the 24th day of October, anno Domini one thousand eight hundred and eighty-seven, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, on November 23, 1887:

PAUL F. BEARDSLEY }
v.
JOHN D. BEARDSLEY *et al.* }

Comes the complainant, by Jones and Martin, Esqrs., his solicitors, and come the defendants, by J. M. Moore, Esq., their solicitor, and said defendants, by their said solicitor, file herein their de-
51 murrer and motion to dismiss; and this cause now coming on for hearing upon the supplemental bill and affidavits on part of complainant and defendants and certain certified copies of proceedings of board of directors of Arkansas and Louis*ville* Railway Company, and the hearing hereof not being concluded, the same is postponed until November thirtieth next.

Which demurrer is in the words and figures following, to wit:

Defendants demur to the bill filed by the complainant herein, and for cause of demurrer say that the said bill does not by its allegation show that this court has any jurisdiction of this cause, either by reason of the subject-*manner* or citizenship of the parties thereto.

J. M. MOORE,
For Defendants.

52 Which motion to strike the supplemental bill from the files is as follows:

Defendants move the court to strike the supplemental bill filed by complainant from the files because complainant filed the same

without notice to the defendants and without leave of the court, contrary to provisions of rule No. 57.

J. M. MOORE,
For Defendants.

Which exhibits to the supplemental bill are as follows:

WASHINGTON, ARK., *Aug.* 10, 1887.

W. H. Carruth, pres't & treas. Ark. & La. R'y.

SIR: I am a stockholder of record in the Arkansas and Louisiana Railway Company, and as such I ask of you the privilege of examining the vouchers and pay-rolls of said company from
53 June 15th, 1887, up to this date.

Yours respectfully, PAUL F. BEARDSLEY.

WASHINGTON, ARKS., *Aug.* 10, 1887.

H. H. Wheeless, auditor Ark. & La. R'y Co.

SIR: I am a stockholder of record in the Arkansas and Louisiana Railway Company, and as such I demand the privilege of examining the books and accounts of said company in your charge and possession.

Yours truly, PAUL F. BEARDSLEY.

Memorandum of a contract made and entered into in duplicate at St. Louis, Mo., this 11th day of June, A. D. 1885, by and between John D. Beardsley and associates, contractors for the construction of the Arkansas and Louisiana railway, of Arkansas, and lessees of said railway, and the Arkansas and Louisiana Railway Com-
54 pany, a corporation created and existing under the laws of the State of Arkansas, parties of the first part, and the St. Louis, Iron Mountain and Southern Railway Company, a consolidated corporation existing under the laws of the States of Missouri and Arkansas, party of the second part, witnesseth:

Whereas said party of the second part has furnished money and materials to aid in the construction and equipment of the said Arkansas and Louisiana railway, for which money and materials it was agreed that said party of the second part should be paid by delivery of the first-mortgage bonds of said Arkansas and Louisiana Railway Company, which bonds run thirty years from their date, bear interest at the rate of five per centum per annum, and are authorized to an amount not exceeding fifteen thousand dollars per mile, and are secured by a first mortgage on the Arkansas and Louisiana railway and all franchises and property appurtenant thereto; which bonds were to be de-
55 livered and received in payment for said advances by said party of the second part at the rate of eighty per centum of their par value; and whereas on the second day of July, A. D. 1883, said Arkansas and Louisiana Railway Company executed and delivered to the Mercantile Trust Company of New York, as trustee, a first mortgage or deed of trust to secure pay-

ment of bonds upon the Arkansas and Louisiana railway as aforesaid, and up to this date there have been certified by said Mercantile Trust Company, trustee as aforesaid, two hundred and forty of said bonds of the denomination of one thousand dollars each and numbered consecutively from one to two hundred and forty, inclusive, and no more, and said two hundred and forty bonds have been heretofore delivered, on the order of said J. D. Beardsley, to R. S. Hayes, first vice-president of the St. Louis, Iron Mountain and Southern Railway Company, said party of the second part; and

56 whereas it has been and is hereby mutually agreed that payment of whatever sum may be due said St. Louis, Iron Mountain and Southern Railway Company from said J. D. Beardsley and associates and said Arkansas and Louisiana Railway Company for materials and supplies furnished as aforesaid shall be made in lawful money and not in the first-mortgage bonds of the Arkansas and Louisiana Railway Company, at the rate of eighty per centum of their par value as aforesaid;

And whereas the parties hereto have this day made a settlement of all claims and demands existing on behalf of each against the other, and said J. D. Beardsley and associates acknowledge themselves, and the said Arkansas and Louisiana Railway Company acknowledges itself with said J. D. Beardsley and associates, to be jointly and severally justly indebted unto the said St. Louis, Iron Mountain and Southern Railway Company in the full sum of one hundred

57 and nineteen thousand six hundred and nine $\frac{57}{100}$ dollars (119,609.57), now due and payable for advances of money and for materials and supplies, all of which said money, materials, and supplies have been faithfully applied and have gone into the construction and equipment of said Arkansas and Louisiana railway; for the payment of which sum, with interest at the rate of six per centum per annum from the first day of July, A. D. 1885, said parties of the first part do hereby, jointly and severally, obligate themselves, and as security for said payment it is hereby declared that said St. Louis, Iron Mountain and Southern Railway Company is justly entitled to an equitable lien upon said Arkansas and Louisiana railway:

In consideration of the premises and of the covenants and agreements hereinafter set forth by the St. Louis, Iron Mountain and Southern Railway Company said J. D. Beardsley and associates and said Arkansas and Louisiana Railway Company, parties of

58 the first part hereto, do hereby waive and relinquish all claims and demands and rights which have accrued or which might hereafter accrue under and by virtue of any and all contracts and agreements, verbal or written, heretofore entered into by said J. D. Beardsley, J. D. Beardsley and associates, or said Arkansas and Louisiana Railway Company with said St. Louis, Iron Mountain and Southern Railway Company or any of its representatives, and, so far as same are in any respect in conflict herewith, said contracts shall be taken to be annulled & for naught held and determined. Said parties of the first part hereby agree that the two hundred and forty first-mortgage bonds now in the custody of R. S. Hayes, first vice-

president of the St. Louis, Iron Mountain and Southern Railway Company, shall remain in said custody until said debt of $119,609.57, with interest as aforesaid, due said St. Louis, Iron Mountain
59 and Southern railway shall be fully paid and discharged, and until said debt is fully paid said bonds shall constitute a lien upon said Arkansas and Louisiana railway in favor of said St. Louis, Iron Mountain and Southern Railway Company, solely and in favor of no other person or persons, it being the intention of this agreement that the equitable lien of said St. Louis, Iron Mountain and Southern Railway Company upon said Arkansas and Louisiana railway for the repayment of the debt due as hereinbefore recited shall constitute a lien prior and superior to that created by the mortgage of July 2d, 1883, and superior to all other liens upon the present line of constructed road of the Arkansas and Louisiana Railway Company.

In consideration whereof said party of the second part agrees to forbear present demand for the payment of the debt as hereinbefore recited, and it is agreed that for the purpose of pay-
60 ing and discharging said indebtedness said parties of the first part, each and all of them, shall continue to operate said Arkansas and Louisiana railway with all reasonable and possible economy, and after paying all actual and necessary expenses of maintaining and operating said railway, the necessary improvements of the present line, and such other outlays as are proper and necessary in connection with the use and operation of said railway all surplus or remaining earnings and revenue arising from the present line of road from Hope to Nashville shall be paid into the treasury of said party of the second part on account of the aforesaid indebtedness of said parties of the first part, and until said indebtedness and interest that may accrue thereon shall be fully paid and discharged no part of the surplus earnings of the Arkan-
61 sas and Louisiana railway shall be diverted for the purpose of undertaking or constructing any new work or for any other purpose unless by agreement in writing of all parties hereto.

Said parties of the first part hereby agree to keep true and correct accounts of all receipts and expenditures from and by reason of the operation of said Arkansas and Louisiana railway, and at all times the books and accounts of said parties of the first part shall be open to inspection of said party of the second part by its proper officer or agent for the purpose of verifying any exhibit or statement as to actual net earnings. Said parties of the first part agree to pay to said parties of the second part from and after the first day of January, 1886, not less than twelve thousand dollars ($12,000) per annum in reduction and towards discharge of the indebtedness hereinbefore recited, and in case of a failure to pay annually at least said
62 sum it shall be the right and privilege of said party of the second part to make public sale at auction of so many of said first-mortgage bonds as remain in the custody of R. S. Hayes, first vice-president as aforesaid, as, in addition to payments made by said parties of the first part, will make the full amount of $12,000.00, annually due and payable to said St. Louis, Iron Mountain and South-

ern Railway Company as aforesaid, and the proceeds of said sale shall be accordingly paid into the treasury of said St. Louis, Iron Mountain and Southern Railway Company to the credit of said parties of the first part upon the debt hereinbefore recited. Said sale shall be made upon sixty days' notice of date, hour, and place to said parties of the first part, and said party of the second part or its legal representative shall have the right to bid for purchase of bonds at any and all said sales.

It is mutually agreed that no more bonds upon the present
63 line of road from Hope to Nashville shall be certified or delivered by the trustee under the mortgage of said Arkansas and Louisiana Railway Company to Mercantile Trust Company, of date July 2d, 1883, and said trustee shall be furnished with a copy of this agreement and shall be instructed by said Arkansas and Louisiana Railway Company not to certify any further or additional issue of bonds on the present constructed line of road between Hope and Nashville, but when said debt due said party of the second part has been fully paid and discharged the two hundred and forty bonds now issued and outstanding and in the custody of R. S. Hayes, first vice-president as aforesaid, excepting any that may have been sold under the provisions of this contract, shall be the property of J. D. Beardsley and associates and shall be subject to
64 his or their order, and the Mercantile Trust Company or the successors in the trust, as hereinbefore recited, shall be notified by said St. Louis, Iron Mountain and Southern Railway Company of the full payment and discharge of the debt aforesaid, and thereupon shall be at liberty to certify further bonds under said deed of trust as if this agreement had never been made.

It has been and is the desire of all parties hereto that said Arkansas and Louisiana railway shall be extended to some desirable connection or terminal point in Louisiana, and it is hereby agreed that if party of the second part shall not consider it advisable to assist parties of the first part by advancing money for that purpose, then said parties of the first part will be free to negotiate wherever they can for assistance, and in any negotiations which they may attempt they are promised the good will of said party of the
65 second part, but none of the income of the present constructed line of road from Hope to Nashville, Arkansas, shall be used for building or maintaining said extension.

For the transfer of freight and the transaction of business between said Arkansas and Louisiana railway and the St. Louis, Iron Mountain and Southern railway, it is provided as follows: The transfer of freight and business shall be at the point of crossing or the intersection of the two roads; settlements and payments of the amounts due on transfer of business shall be paid monthly, as has been the custom in the past. Each party may maintain its own agency at point of transfer, or joint agency may be established and maintained by mutual agreement upon such terms as may be deemed equitable. Through traffic rates between St. Louis, Carondelet, Columbus, Cairo, and Belmont, and all points on the Arkansas and Lou-

isiana railway will be maintained, subject, however, to such
66 changes as may be agreed upon. The divisions on these through rates will be twenty-five per cent. to the Arkansas and Louisiana Railway Company and seventy-five per cent. to the St. Louis, Iron Mountain and Southern Railway Company.

No specials will be granted by either party over the road of the other without their consent first obtained. The party of the second part undertakes to protect party of the first part, as far as in its power, from competing points or lines, such as Fort Smith, Hot Springs, Hood's Landing, and Paris, Texas, by granting as low rates as are given by it to any competing points or lines.

Said party of the second part will allow said parties of the first part to have necessary work done in their shops, charging them therefor same rates as are charged their own lines.

Said party of the second part will also transport for said
67 parties of the first part all supplies and materials for their use at rates not exceeding those now charged and as favorable as are granted to the other roads which are a part of the Missouri Pacific system.

This freight contract to be in force and effect until one year after the full payment of the debt due to party of the second part as hereinbefore provided. It may be continued by mutual consent or terminated at any time after one year after payment as aforesaid by either party hereto giving six months' notice to the other.

In witness whereof said J. D. Beardsley, for himself and associates, of the first part, has hereunto set his hand, and the Arkansas and Louisiana Railway Company, also of the first part, has caused these presents to be subscribed in its corporate name by its president and its corporate seal to be hereto affixed, attested by its secretary, and the St. Louis, Iron Mountain and Southern Rail-
68 way Company, of the second part, hath done the like, by its first vice-president and secretary, this eleventh day of June, A. D. 1885.

[Seal of the Arkansas & Louisiana Railway Company.]

(Signed) J. D. BEARDSLEY.

ARKANSAS AND LOUISIANA RAILWAY COMPANY,

(Signed) By W. H. CARRUTH, *President.*

Attest:

(Signed) R. B. WILLIAMS, *Sec'y.*

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY,

(Signed) By R. S. HAYES, *First Vice-president.*

[Seal of the St. Louis, Iron Mountain & Southern Railway Company.]

Attest:

(Signed) STEPHEN D. BARLOW,
Ass't Secretary.

And on December 3, 1887, as follows:

On this day comes the complainant, by Jones & Martin, Esqs., his solicitors, and the defendants Arkansas & Louisiana Rail-
69 way Company and John D. Beardsly, by J. M. Moore, Esq., their solicitor, and the St. Louis, Iron Mountain and Southern Railway Company, by Dodge & Johnson, Esqrs., its solicitors; and the complainant presents to the court his supplemental bill in equity in this cause, praying the appointment of a receiver to take possession of and operate the Arkansas and Louisiana railway, and to take possession of and manage certain other property mentioned in said supplemental bill. Said supplemental bill, heretofore filed by leave of court, is heard, together with certain affidavits read to the court and certain records read also, and the court, being well and sufficiently advised in the premises, is of the opinion that the appointment of such a receiver is necessary to protect complainant's interests and rights. It is ordered that William P. Hart be, and he is hereby, appointed the receiver of this court, and
70 as such is ordered and directed, first being sworn and giving bond in the sum of thirty thousand dollars, payable to the United States of America, with security to be approved by this court, to take possession of the Arkansas and Louisiana railway and operate the same through its whole length, together with its connections, tracks, depots, rolling stock, books, papers, lands, buildings, tools, moneys, choses in action, and all and singular its property of every kind, character, and description, including the property adjudged to be the property of said Arkansas and Louisiana Railway Company and held by the defendant John D. Beardsley, as trustee, in the decrees heretofore rendered in this cause then pending in this court, wherein Paul F. Beardsley was complainant and John D. Beardsley and The Arkansas and Louisiana Railway Company were defendants.

It is therefore ordered that the defendants John D. Beards-
71 ley and The Arkansas and Louisiana Railway Company shall, upon said receiver filing the bond required and taking the oath required, surrender possession at once of the said Arkansas and Louisiana railway, its rolling stock, and all other property of every kind and character belonging to said railway company last mentioned, including the property hereinbefore described or mentioned, to said receiver, and that said receiver shall operate the said railway as a railroad in the usual manner in its proper business as a carrier of freights and passengers and express and mail matter; that he keep accounts of all receipts and expenses and make report thereof and of all his acts and doings to this court as herein provided.

And it is further ordered that, as soon as may be, said receiver do make and file with the clerk of this court a true, full, and
72 complete inventory of all and singular the property of said company, real, personal, and mixed, which has or may come into his hands, possession, or control as receiver in this cause.

And it is further ordered that said receiver shall continue the operation of said Arkansas and Louisiana railway in the ordinary

and usual course as the same is now operated in the common carriage of freight and passengers and in the carriage of mail and express matter, having due regard to the public interest and accommodation of the public, and keeping the premises and property, both real and personal, in good condition and repair, to the end that the said railway may be efficiently operated with safety & convenience to the public.

To the same end he shall from time to time employ and discharge all needful labor, servants, and agents, and shall purchase and
73 pay for all needful material and supplies, as seem to him to be necessary and proper in the exercise of his sound discretion, and he shall have power to settle and adjust according to the usual course of business all outstanding traffic balances with other railways, steamboats, and telegraph or telephone companies, to settle and adjust such like balances as may hereafter from time to time arise, and he shall have power to make and abrogate all usual and necessary and proper agreements for the interchange of business in the way of traffic, and to continue or abrogate existing arrangements of the like kind, and to continue existing or to make new and proper arrangements of the like kind, provided that the contract for the interchange of traffic now existing between the said Arkansas and Louisiana Railway Company and the St. Louis, Iron Mountain and Southern Railway Company shall not
74 be abrogated by said receiver.

And it is further ordered that said receiver have power at his discretion to prosecute and defend all existing actions by or against said company, and to pay or defray the usual and ordinary expenses incident thereto, and to commence and prosecute any action which in the usual course of business he may deem necessary and proper to commence hereafter, either in the name of said company or in his own name as such receiver, as he may be advised, and to defend any and all suits that may hereafter be brought against said company or against himself as receiver, and to defray the necessary expenses of such proper prosecution and defenses, including reasonable fees of counsel employed for such purpose, and he is authorized and empowered to collect or convert any of the notes, bonds, or
75 other securities payable to said Arkansas and Louisiana Railway Company which may come into his hands, and to pledge or hypothecate the same to secure payment of any moneys borrowed by him by leave of this court, to pay, at his discretion, all liens existing on the depots or depot buildings used about the business of said railway company, and to pay all due and unpaid purchase-money of locomotives or of other rolling stock used on said railway if the same can be discharged out of the earnings of the road.

It is further ordered that said receiver, acting in good faith and with ordinary prudence and care in the management of said business, shall not be answerable in his individual right for any breach of any contract entered into by him as receiver, or for any injury to any person or to any property of any person by an accident occurring in the management and operation of said railway, or by
76 its business or by or through the negligence of any person

employed by him, nor, acting with good and ordinary prudence and care, shall he be liable for any default, theft, or embezzlement of any person employed by him.

And the said receiver is further ordered to pay and discharge all debts due from the company to laborers, servants, agents, and employees of all kind for services rendered in or about the conduct and management of the business of said company, save the defendant John D. Beardsley, to whom nothing shall be paid by said receiver without the order of the court, and also to pay any debt of said company contracted for materials and supplies purchased for the use of said company or its employees.

Said receiver will make monthly reports to the court on such day of the month as he may fix.

77 Whenever the surplus earnings and revenues of said Arkansas and Louisiana railway and property, after paying the operating expenses and for repairs and materials, as hereinbefore provided for, amount to one thousand dollars, the same shall be paid over by said receiver to the St. Louis, Iron Mountain and Southern Railway Company on the debt due said company from the defendant Arkansas and Louisiana Railway Company.

Leave is given to sue said receiver in the State courts in any county through which said Arkansas and Louisiana railway runs for any money demand whatever, whether upon contract or tort, and said receiver shall appoint, at the town of Washington, in Hempstead county, and at the town of Nashville, in Howard county, an agent upon whom service of any suit brought against said receiver in said counties, respectively, may be made

78 with the same and like effect as if made on said receiver personally. Said receiver shall cause to be printed and posted up in each of the depots or stations on the line of said road the foregoing clause of this decree relating to the appointment of agents upon whom service can be made, and said posters or handbills shall name the agents appointed at said towns respectively.

No execution, writ of replevin, or other process shall be served or levied upon said road or any of its property in the hands of said receiver, but any person claiming any property in the custody and possession of the receiver shall intervene in this court for the same, and final judgments against the receiver for money in the State courts will be audited and allowed by this court as of course and may be paid by said receiver without an order of this court.

And the defendant Arkansas and Louisiana Railway Company and its several officers are hereby enjoined from in any man-

79 ner interfering with the conduct or management of said road and property by said receiver, but nothing herein contained is to be construed to prevent the said Arkansas and Louisiana Railway Company or its stockholders from electing its officers and board of directors at the time or times prescribed by articles of incorporation or by-laws.

And on January 7, 1888, the affidavit of William H. Carruth *et al.* was filed, which is as follows:

Before the undersigned, an acting and duly commissioned notary public within and for the county of Hempstead, in the State of Arkansas, personally appeared William H. Carruth, A. B. Williams, Henry B. Holman, Joel D. Conway, and Robert B. Williams, who, being severally sworn, say—

That they are stockholders in and members of the board
80 of directors of the Arkansas and Louisiana Railway Company and have been ever since the organization of the company; that they were stockholders in and members of the boards of directors respectively of the Washington and Hope Railway Company and of the Arkansas and Indian Territory Railway Company, of which said companies the Arkansas and Louisiana Railway Company is the successor; that they are in a general way familiar with the affairs of the Arkansas and Louisiana Railway Company and were familiar with the affairs of the companies which that company succeeded; that the resolution adopted by the board of directors of the Arkansas and Louisiana Railway Company at the meeting thereof held on the 22d day of October, 1887, a copy of which is hereto attached and made part of this affidavit, is true and fully sets out and explains the reasons for their action in regard to the matters therein mentioned; that they were not then nor are they
81 or either of them now or at any other time acting under any undue influence excited by J. D. Beardsley. The allegation made by plaintiff in his complaint that they are entirely under the influence or control of J. D. Beardsley is altogether untrue, whether applied to them either collectively or as individuals. They have endeavored to advise the said J. D. Beardsley in his management of the road when they thought it for the interest of the road and for the public good, and no further. The said J. D. Beardsley has never attempted to influence or induce them or either of them to do anything they thought wrong or improper or injurious to the interests of the company or of the plaintiff. They have occasionally differed with him in their ideas of the management of the road and its affairs, and in such cases those who differed with him have voted against his suggestions. The said J. D. Beardsly has never
82 been permitted by the directors to squander or missapply the funds of the company, nor would they have allowed him to do so nor do they believe that he has done so. They say that the road was in bad condition, and the improvements and repairs that have been put upon it were all necessary, and they are informed by the employees and operatives of the company and upon that information believe that the road, road-bed, and all the operating properties of the company are in a better condition than they have ever been at any time and are being constantly improved under the present management. They further state that in discussing propositions submitted for the action of the board the question of their right to act or whether the same in any manner conflicted with the decree of the Federal court in the case of Paul F. Beardsley *vs.* J. D. Beardsley and others was in every instance the first matter considered in connection therewith, and in no case have they taken

any action whatever which in their judgment and understanding conflicted said decree.

They have been very careful to avoid doing anything or taking any action which they understood to be prohibited by said decree. They say that all allegations of collusion or conspiracy between affiants and said J. D. Beardsly are untrue. They have not and would not in their capacity of directors take or, as far as it lay in their power to prevent it, permit any action to be taken that would operate prejudicially to either of the parties to said litigation. They say that the road and its success are matters in which they feel the deepest personal concern and interest, and they would not, knowingly, permit J. D. Beardsley or any one else to take any action which they could prevent that would jeopardise or endanger the success of the road; that they are all citizens of the town of Washington and own property therein, the value of which is in a large measure dependent upon the success of this road, and their financial interests are, to a very large extent, involved in said road, and it is to their interest to enhance the value of the road as much as possible.

W. H. CARRUTH.
A. B. WILLIAMS.
H. B. HOLMAN.
J. D. CONWAY.
R. B. WILLIAMS.

Sworn to and subscribed before me this 8th day of November, 1887.

[SEAL.] JNO. E. WILLIAMS,
Notary Public.

At a meeting of the board of directors of the Arkansas and Louisiana Railway Company, held at the office of the company on the 22d day of October, 1887, the following, among other, proceedings were had, to wit:

On motion of Director R. B. Williams, the following resolution was unanimously adopted:

Whereas the members of this board were assailed and their motives impugned and denounced in a cause recently heard and determined adversely to the plaintiff in the Hempstead circuit court, in chancery, in which Paul F. Beardsly was plaintiff and J. D. Beardsly and others were defendants, for their action in allowing certain claims made against the Arkansas and Louisiana Railway Company by J. D. Beardsley at a meeting of the board had on the 26th day of March, 1887; and whereas the board desires to set itself right in the premises:

Therefore be it resolved, That the reasons hereinafter assigned are the sole and only reasons which moved this board to act as it did in allowing said claims.

In the matter of the "bonus notes," as they are called, the Washington and Hope Railway Company by its contract of September 10th, 1879, obligated itself to procure and give to J. D. Beardsley the notes of solvent citizens of the value of

$10,000 as a part of the consideration for building and operating the Washington and Hope railway, but, instead of doing so, it caused said notes to be executed to the company—collected a large part thereof into its own treasury. The Arkansas and Indian Territory railway collected and appropriated some of said notes, as did also the Arkansas and Louisiana Railway Company.

In the several sales by which the Arkansas and Louisiana Railway Company acquired the property of the Washington and Hope Railway Company the Arkansas and Louisiana Railway Company became by its stipulations and agreements liable for all of the debts of every character of the Washington and Hope and Arkansas and Indian Territory Railway Company.

87 These notes nor the proceeds thereof had ever been paid to J. D. Beardsley, as was agreed in the contract of September 10th, 1879, and the board regarded the claim as an honest and just debt and so allowed it. As to the $2,500 salary allowed J. D. Beardsley, the records show that he was working for the Washington and Hope Railway Company for a salary of $2,000 per annum, and it is within the knowledge of members of the board that he had only drawn $1 500 of his salary for two years, leaving due him the sum of $2,500.

The Arkansas and Louisiana Railway Company having become responsible for the debts of the Washington and Hope Railway Company, we regarded that as a just debt and one that should be paid.

As to the $2,400 extra salary allowed, J. D. Beardsley stated to several members of the board that he had had an offer of $6,000 per annum to take the management of a railroad in the East,

88 and if he remained here in charge of this road and its affairs he should expect the same salary from that time forward.

We then thought and now think that his place could not have been supplied and that it was to the interest of the road to retain him at that salary, and, while the matter was never discussed in a meeting of the board and no contract was made with him for that salary, yet it was understood by those directors to whom he spoke of the matter that he was to be allowed a salary at that rate, and, when he presented his account for it, it was accordingly allowed.

As to the claim of $172, it is within the knowledge of members of the board that J. D. Beardsley had furnished to the Washington and Hope Railway Company a desk and other material, which was sold and the proceeds thereof turned into the treasury of the company, and he had never been paid therefor, and this was

89 regarded as a just claim against the company, and so allowed.

In the matter of the claim of the "land grant," as it is called, the Washington and Hope Railway Company agreed with J. D. Beardsly, though the agreement was not incorporated in the written contract with him, that upon the completion of the road in the manner and within the time indicated in the act of the General Assembly approved March 5th, 1879, the company would convey to him all the lands conveyed to the said company under said act; but

instead of doing this the Washington and Hope Railway Company conveyed these lands to the Arkansas and Indian Territory Railway Company and that company, in turn to the Arkansas and Louisiana Railway Company, conveyed the lands to J. D. Beardsley and associates in the construction contract of May 22d, 1883, as a part of the consideration for building the Arkansas and Louisiana railway, so that the same were never in fact conveyed to J. D. Beardsly under the original agreement. This the board regarded as a personal contract with J. D. Beardsley, and when it agreed to take up his claim therefor and adjust it upon an equitable basis it felt that it was simply agreeing to allow a just claim when the amount thereof could be arrived at.

90

This company had assumed all the debts of the Washington and Hope Railway Company and the Arkansas and Indian Territory Railway Company, and this was regarded as one of the debts of the Washington and Hope Railway Company. While the records show that the sale of Washington and Hope to the Arkansas and Indian Territory railway and the sale of the latter to the Arkansas and Louisiana Railway Company all occurred at once, as a matter of fact the Arkansas and Indian Territory Railway Company was in existence for some months and work was begun and carried on thereunder before it was agreed to organize the Arkansas and Louisiana Railway Company, and the salary allowed J. D. Beardsley was for work actually done by him for that company and the payment thereof assumed by the Arkansas and Louisiana Railway Company.

91

The board was then and is now of the opinion that the matter of accounts between J. D. Beardsly and P. F. Beardsly were settled by the decree of the Federal court, but that the accounts between J. D. Beardsly and the Arkansas and Louisiana Railway Company, as successor of the Washington and Hope and the Arkansas and Indian Territory Railway Companies, were not adjusted by that decree, and that they were acting in matters which they were authorized to deal with; and they here now deny that they were in any manner acting intentionally in contempt of the orders and decrees of said court. So long as it was understood by both J. D. Beardsley and this board that J. D. Beardsley was the sole owner of the road and all of its properties except the stock held by the directors, it was never thought necessary to pass upon or allow these claims, but after the decree of the Federal court declaring that Paul F. Beardsley had an undivided one-third interest in the stock and property of the company, then it was thought but just and right that these claims which were regarded as just should be allowed and paid.

92

I, Robert B. Williams, secretary of the Arkansas and Louisiana Railway Company, do hereby certify that the above and foregoing writing is a true and complete copy of resolutions adopted by the board of directors of said company at a meeting thereof held on the 22d day of October, 1887, as the same now appears upon the records of said board now in my possession.

93

Witness my hand and the seal of said company this 8th day of November, 1887.

[SEAL.] R. B. WILLIAMS,
Secretary, &c.

94–100 UNITED STATES OF AMERICA, }
Western Division of the Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the western division of the eastern district of Arkansas, begun and holden on Monday, the 7th day of April, anno Domini one thousand eight hundred and eighty-eight, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, on July 23, 1888, as follows:

101 Comes the complainant, by Jones and Martin, his solicitors, and files herein his amendment to his supplemental bill, and come the defendants, by Dodge & Johnson, their solicitors, and the motion to discharge the receiver herein is by the court overruled, with leave to the parties to renew said motion whenever they may be advised.

Which amendment to the supplemental bill is as follows:

Leave of the court being first had and obtained, the complainant amends his supplemental bill of complaint herein by making Jay Gould a party defendant hereto, and asks that a subpœna be issued directing and commanding him to answer this complaint; and he further amends his said supplemental bill of complaint by striking out of said supplemental bill of complaint all language after

102 the word "him," in the sixth line of the 18th page of said supplemental bill, and down to the word "and," the beginning of the 16th line of said page, and inserting in lieu thereof the following language: "And your orator further states that he has never been permitted to see the said contract of bargain and sale so entered into by the said defendants, John D. Beardsley and Jay Gould, but that he has been informed and believes and from such information and belief charges that by the terms of said contract it was agreed that the said Jay Gould would pay to the said John D. Beardsley a sum of money, the amount of which is to your orator unknown, for fifty-one per cent. of all the stock and bonds of said Arkansas and Louisiana Railway Company, and in addition thereto the said John D. should have for his own use and as his individual property all moneys then in the treasury of said last-named railway company, amounting to more than twenty-two thou-

103 sand dollars (22,000.00) as aforesaid, and also all of the lands which had been decreed by this court to be the property of said Arkansas and Louisiana Railway Company, and this in the face of the fact, well known to said Jay Gould and John D. Beardsley, that all of said money should have been applied to the payment of the indebtedness aforesaid to the defendant St. Louis, Iron Mount-

ain and Southern Railway Company, in accordance with the terms of said settlement contract of June 11th, 1885.

And in pursuance of such unlawful agreement such steps were taken by the said John D. and the board of directors of said Arkansas and Louisiana Railway Company as have been hereinbefore and will be hereinafter stated to extract from the treasury of said company all of the money therein, amounting as aforesaid to more than twenty-two thousand dollars (22,000.00), and this he believes and charges was done with the knowledge and consent
104 of the said Jay Gould."

JONES & MARTIN,
Sol's for Complainant.

On July 24, 1888, as follows:

Comes the complainant, by Jones and Martin, Esqrs., his solicitors, and come the defendants, by Dodge and Johnson, Esqrs., their solicitors, and the demurrer to the bill is overruled, and, on motion, leave is given the defendants to file answer until the 15th of August, next.

On August 15th, 1888, the answer to the supplemental bill was filed:

The defendant John D. Beardsley, for his separate answer to so much of the bill of complaint filed by the plaintiff in said cause as he is advised is material and necessary to be answered, says:

It is not true that there has been any waste, mismanagement, or misapplication of the funds of the Arkansas and Louis-
105 iana Railway Company by this defendant or by any officer or agent of said company to his knowledge.

It is not true that there has been any failure to apply the net earnings of said road or so much thereof as remained after paying for needful improvements, repairs, and replacements and other necessary disbursements to the alleged indebtedness to the St. Louis, Iron Mountain and Southern Railway Company, according to the terms of the contract of June 11th, 1885, referred to in the complaint. On the contrary, the St. Louis, Iron Mountain and Southern Railway Company was paid the sum of twelve thousand dollars during and for the year 1886. The installment for the year 1887 was not due at the time the bill in this cause was filed and the property placed in the hands of the receiver, and defendant is unable to state what payments, if any, have been made since that time.

It is not true that there was at or prior to the time of the
106 filing of the supplemental bill herein a large accumulation of money on hand in the treasury of the Arkansas and Louisiana Railway Company, resulting from the earnings of said road. At the time the alleged contract was entered into with the St. Louis, Iron Mountain and Southern Railway Company the Arkansas and Louisiana railway was in a crude and unfinished state and still is, and it has required all the earnings over and above the operating expenses and what has been paid to the St. Louis, Iron Mountain and Southern Railway Company as afore-

said to meet the necessary repairs and improvements and pay the outstanding and matured debts of the company and pay for materials.

It is not true that this defendant has been allowed by the Arkansas and Louisiana Railway Company to or that he has in fact used the money of said company for the payment of his personal expenses in the manner or for the purposes alleged in the
107 complaint or for any other purpose.

It is not true that he has used any of the funds of said company in the payment of his attorneys' fees and costs in the litigation referred to. Said company was a party to said proceedings, in which it was sought to place its property and business in the hands of a receiver, and necessarily incurred some expense in resisting such orders.

It has paid in all the sum of one hundred and eighty-one dollars and — cents in that behalf for its own expenses and not for this defendant's, and said sum is a very small proportion of the amount paid by this defendant for his defense of his cause.

It is not true that the funds of the said company have been used in any manner in connection with the construction or the negotiations in respect to the construction of the railroad referred to in Louisiana. The said company has no interest in connection
108 with said enterprise, and has not contributed any money toward it nor has any of the aforesaid expenses been charged to the Arkansas and Louisiana Railway Company.

It is true that the said company borrowed of the defendant's wife the sum of twelve hundred dollars, the same being her separate property, on or about January 1st, 1886, for one year, and that it paid her one year's interest for the use thereof, but it is not true that said money was returned before the expiration of the term for which the same was borrowed.

It is not true, as alleged, that defendant has taken seven hundred and fifty tons of steel rails belonging to the Arkansas and Louisiana Railway Company or any other quantity of rails belonging to said company for the use and in the construction of his aforesaid railroad in the State of Louisiana. On the contrary, he has furnished to his codefendant and placed on its tracks about forty-
109 five hundred dollars' — of steel rails, splices, and bolts, which were purchased by him for his said road in Louisiana and for which said Arkansas and Louisiana Railway Company has not paid him and is now indebted to him.

It is not true that defendant has taken any scrapers or tools belonging to the Arkansas and Louisiana Railway Company to the State of Louisiana for use in constructing the railroad referred to in that State, viz., the Louisiana North and South railway. It is true that the Arkansas and Louisiana Railway Company, in the summer of 1887, had on hand a lot of old scrapers and an old car of laying iron, all of which it bought several years ago and used in the construction of its own road, and which were of no use except for construction, and which were not needed
110 by said company, and said scrapers and car were sold by

mpany to the Louisiana North and South Railway
y for their full value. The engine alleged to have been
Louisiana by the defendant was rented by the Arkansas
uisiana Railway Company for use in the construction of the
ana North and South Railway Company, upon an agreement
nderstanding that the Arkansas and Louisiana Railway Com-
shall be paid the full rental value thereof, and the said en-
is to be returned to said company when called for. Said com-
ny has no present use for said engine, and it was to its interest
rent it and obtain a revenue for its use. The alleged litigation
growing out of the alleged unwise and unlawful discriminations at
Nashville, Arkansas, as well as the alleged hostility against the
Arkansas and Louisiana Railway Company in Howard
111 county, all originated at a time when the plaintiff was act-
ing as ass't superintendent or master of transportation of this
road and had his headquarters at Nashville. The course pursued
by the road was strongly advised and was almost entirely carried
out by him, and the troubles and litigations to which he refers were
in a large measure due to his conduct. Within a very short time
after he left the employment of the road the alleged discriminations
were discontinued and have never been repeated.

The alleged telephone to Columbus was constructed for the pur-
pose of controlling the business of that place, which had up to that
time been diverted largely to Fulton and Hope, on the St. Louis,
Iron Mountain and Southern railway. The line is believed to have
accomplished the purpose for which it was built, but it had to be
maintained at a cost largely in excess of its earnings. Its cost was
about two hundred and fifty dollars, including telephones.
112 Of this sum one hundred dollars was contributed by the
people of Columbus. It was sold to H. B. Holman for one
hundred and fifty dollars, about the cost to the company, he under-
taking to maintain the line.

It is true that defendant did at the request of the owner of a small
iron foundry at Nashville purchase and ship up the road a car of
coke, which he kept there for the convenience of said foundry. It
is also true that the defendant had previously allowed the plaintiff
when he was in the employment of the road to ship a car of coke
for the same purpose, but these matters transpired and terminated
while this defendant was lessee of the road.

It is likewise true that this defendant did in December, 1884,
cause the road to present to the plaintiff *with* the sum of one hun-
dred and eighty-seven dollars — cents to enable him to pay the
treasurer, W. H. Carruth, that amount, which the plaintiff had over-
drawn.

113 It is also true that he caused the road to make small pres-
ents to faithful and valuable employees as a Christmas greet-
ing, and that at the same time, viz., Christmas, 1886, he caused the
road to present W. H. Carruth a clock, as alleged. The reason for
presenting the clock to the said W. H. Carruth was the fact that he
had been president and treasurer of said company for several years
and had performed much and valuable service for the company and

had often loaned it his money and credit, for all of which ay the never asked or received any salary or compensation. pay for

It is not true that defendant has expended the money of he Arpany in the purchase of useless or unnecessary articles for in fact or operation of the road, nor is it true that the money of the sonal pany has been expended with the knowledge of the defenda the political purposes. It is true that the defendant while he was ating said road as lessee did, for the convenience of the aid
114 zens of Washington and Nashville, ship and allow i- plaintiff, who was then an employee of the road, to ship or two car-loads of shingle-, or more, to said points and sell them to persons needing them.

Defendant denies that the lands mentioned and described in complainant's supplemental bill and alleged to have been omitted in his original bill in said cause belong to the Arkansas and Louisiana Railway Company, or that the complainant or said company has any interest therein.

Further answering, defendant says it is true that he made out and presented to the board of directors of his codefendant, the Arkansas and Louisiana Railway Company, an account for certain moneys due him by said company, and on the — day of March, 1887, the same was allowed at a meeting of the board and ordered paid and was afterward paid to this defendant. Said account consisted of the following items, viz:

115 First. Twenty-five hundred dollars for balance of salary due this defendant from the Washington & Hope Railway Company and the Arkansas and Indian Territory Railway Company in the years 1881 and 1882 and a part of 1883.

During that time defendant was getting a salary of two thousand dollars per annum; he received as his salary only the sum of fifteen hundred dollars, leaving the above balance of twenty-five hundred dollars unpaid; which indebtedness, together with all other indebtedness of each of said companies, was assumed by respondent's codefendant.

Second. — dollars was for the proceeds of what are known as the "bonus notes" and grew out of the following transaction: Under a certain contract entered into between respondent and the Washington and Hope Railway Company on the 10th day of September, 1879, for the construction of said road, said company agreed and undertook to procure and deliver to respondent the notes
116 of solvent citizens to the amount of ten thousand dollars. Said company did procure said notes, but, instead of having them made payable to respondent, caused the same to be executed to itself, and subsequently collected a part of said notes and turned the residue of them over to its successor, the Arkansas and Indian Territory Railway Company, by whom all of them were collected, whereby said companies became liable to respondent for the sums so collected by them, and the Arkansas and Louisiana railway, by its assumption of the liabilities of said companies, likewise became liable to him for said sums.

Third. The item of twenty-four hundred dollars was allowed de-

fendant on account of an increase of salary claimed by him under the following circumstances: Some months prior to the date of the allowance respondent was offered a position on another road similar
117 to that occupied by him on this codefendant, and was considering the advisability of accepting said offer, when the president and directors of his codefendant, being advised of the facts, professed themselves as unwilling that he should leave the road and offered, in order to induce him to remain with it, to allow and pay him the like amount as he had been offered, upon which condition he consented to remain. In the meantime no formal action had been taken by the board and respondent continued to receive the usual monthly payments on his salary, but with the understanding that it was only received as a partial payment and not in full of his salary. The matter was submitted to the board of directors for allowance by respondent because he understood and believed that to be the proper and formal manner to dispose of it so as to preserve a record of the transaction. The residue of the allowance was for office furniture and other property of that character, which respondent had furnished his codefendant. The
118 facts upon which said several allowances were based were well and personally known to all the directors, and respondent's right to be paid said items had never been disputed or denied; on the contrary, it had in each instance been distinctly recognized and understood, as between the respondent and the directors, from the inception of each of said transactions.

Respondent denies that the liability of his codefendant to him for the several items of said allowance was passed upon or adjudicated by this court in the decree entered in the original proceeding between the parties to this cause, or that codefendant's liability to respondent was at issue in said cause or could, under the pleadings and issues therein, have been properly adjudicated or passed upon, even if such had been the intention of the decree entered in said cause.

Respondent further represents that complainant-, The
119 Arkansas and Louisiana Railway Company, The St. Louis, Iron Mountain and Southern Railway Company, and this defendant were all citizens of this State at the time of the filing of complainant's bill herein and still are citizens and residents of this State, and he denies that this court has any jurisdiction to hear said cause or to make any order or pass any decree therein.

And, having fully answered, respondent prays that he may be hence dismissed with his reasonable costs in said cause expended; and he will ever pray, &c.

J. D. BEARDSLY,
By J. M. MOORE, *Sol.*

And on the same day was filed a motion to dismiss, which is as follows:

Comes the defendant, John D. Beardsley, and moves the court to dismiss the complainant's bill filed in said cause, because
120 he says it is not shown by the averments of said bill that the

court has jurisdiction of said cause, either by reason of the subject-matter thereof or the citizenship of the parties thereto.

J. M. MOORE,
For J. D. BEARDSLEY.

On September 1, 1888, was filed the following replication to answer of J. D. Beardsly:

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this that any other matter or thing whatsoever in the said answer contained material or effectual in
121 the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

JONES & MARTIN,
For Complainant.

On September 26, 1888, the following answer was filed of Jay Gould:

For answer unto so much of the amendment to the supplemental bill, as filed by the complainant herein on the 23d day of July, 1888, and unto such parts thereof as he is advised is material or relevant, reserving unto himself all manner of exceptions to the many errors therein contained and to the matters and things *as* therein set forth as wholly immaterial and irrelevant to the
122 issues involved in this case and as wholly insufficient in law or equity, answering, this defendant, Jay Gould, says:

1st. That he admits that on March 7th, 1887, he purchased from John D. Beardsly 51 % of all the stocks and bonds of the Arkansas and Louisiana Railway Company as alleged in the said supplemental bill and the amendment thereto.

That said contract of purchase was in writing and for the sum of $51,000.00, to be paid in as therein specified.

All of which will be more fully seen, reference being had to a true copy of said contract hereto attached as Exhibit "A" and made specifically a part of this answer.

2d. This defendant denies that at the time of said sale and purchase by him he knew or had any means of knowing that the Arkansas and Louisiana Railway Company was indebted to
123 the said John D. Beardsley in the sum of $22,000.00 or in any other sum, or that the said John D. Beardsly ever claimed that the said Arkansas and Louisiana Railway Company was indebted to him in any sum whatever; and this respondent says that on the contrary, as will be seen by reference to said con-

tract hereto attached, the said John D. Beardsley, after minutely setting out the debt due from the Arkansas and Louisiana Railway Company to the St. Louis, Iron Mountain & Southern Railway Company and two other certain debts due for two new locomotives bought by the Arkansas and Louisiana Railway Company, expressly stipulated "that the said Arkansas and Louisiana Railway Company is (was) free from floating debt," & that "any amount of floating debt now (then) owing to the employees or others he (the said John D. B.) will (would) himself pay."

124 Respondent says that, having no other knowledge but such as was derived from the said John D. Beardsley, he was wholly ignorant of any such claim and never in any manner acknowledged or consented to the said John D. Beardsley taking from the treasury of the Arkansas and Louisiana Railway Company the said sum of $22,000.00 or any other sum, as alleged in the supplemental bill.

3d. This respondent would further show that on July 14th, 1887, becoming aware of the fact that there might be other claims against the Arkansas and Louisiana Railway Company not mentioned by John D. Beardsley in his stipulation, as referred to as aforesaid, he called upon the said John D. Beardsly for further security to protect his guaranties, as contained in the contract of March 7, 1887, and thereupon an additional contract was entered into as of

125 that date, whereby the said John D. Beardsly, "in order to secure and protect the Arkansas and Louisiana Railway Company and said Jay Gould (defendant), as owner of 51 per cent. of its stock and bonds, against any and all debts of said company in existence prior to April 1, 1887, and against any claims or demands of any description that may affect the title of said company to a clear and undisputed right of way of one hundred feet, and also against any claim of Vinton Alderman, &c.," agreed and bound himself to assign all of his right, title, & interest in and to the 49 per cent. of stock and bonds remaining in himself, subject, however, to the rights of the said plaintiff herein; that said assignment was duly made, as will be seen by reference being had to a true copy of said contract, attached hereto as Exhibit "B" and made a part of this answer.

126 4th. And, answering more fully and completely the allegations of said amendment to said supplemental bill filed herein, this respondent says that at the time he purchased the 51 per cent. of the stock and bonds of the Arkansas and Louisiana Railway Company from the said John D. Beardsly he did not know that the said John D. Beardsley had any claim for $22,000.00 or any other sum against the said Arkansas and Louisiana Railway Company; that he did not know or consent to the said John D. Beardsley withdrawing said sum from the treasury of the Arkansas and Louisiana Railway Company, and that if the same was done, as alleged in the supplemental bill, it was done without the knowledge or consent of this respondent.

5th. This defendant denies that he ever agreed with the said

John D. Beardsly or with any other person that said
127 Beardsly should have for his own use or as his individual property all or any part of the money then in the treasury of said railway company, amounting to more than twenty-two thousand (22,000.00) dollars or any other sum, or that he agreed that said Beardsley should have all or any part of the lands which had been decreed by this court to be the property of the said Arkansas and Louisiana Railway Company, or any other lands whatever.

And this defendant says that no agreement about anything was made between said Beardsley and himself, except as is fully and clearly set forth in the said two contracts hereto attached and made part of this answer.

6th. This defendant further says there never was any agreement or understanding of any kind or character between him and the said John D. Beardsley outside of those contained in the said
128 two contracts relative to any of the matters and things set forth in the said supplemental bill of complaint.

And, having answered fully, this respondent prays to be dismissed with all his costs, &c.

DODGE & JOHNSON,
Att'ys for Defendant.

STATE OF NEW YORK, }
County of New York. }

I, Jay Gould, on oath state that the matters and things set forth in the foregoing answer are true to the best of *his* knowledge and belief.

JAY GOULD.

Subscribed and sworn to before me this 10th day of Sept., 1888.

WM. J. HARDING,
Not. Pub., Kings Co., N. Y.

Certificate filed in N. Y. Co.

EXHIBIT "A."

The Arkansas and Louisiana railroad is finished from Hope, on the Iron Mountain line, to the town of Nashville, a distance
129 of twenty-five and six-tenths miles.

It has issued and there *is* outstanding two thousand (2,000) shares of full-paid stock, of which eighty (80) shares are in the names of directors, but by them endorsed and held by the secretary of the company for John D. Beardsley, and the nineteen hundred and twenty (1,920) shares are in the possession of Mr. Geo. C. Smith, assistant secretary of the St. Louis, Iron Mountain and Southern Railway Company, part of which is endorsed and part not. It is not held by the Iron Mountain Company as collateral, but subject to the call of John D. Beardsley, which leaves thirty-one hundred and twenty (3,120) shares, and which may be issued under the construction contract to John D. Beardsley.

The construction contract provided and the first mortgage
130 provides for the issue of bonds at the rate of fifteen thousand dollars (15,000) per mile of completed road, which on the twenty-five and six-tenths miles now completed authorizes the issue of three hundred and eighty-four (384) bonds of one thousand dollars (1,000) each, to wit, three hundred and eighty-four thousand dollars (384,000.00), of which bonds there have been issued and delivered up to this date two hundred and forty (240) bonds of one thousand (1,000) dollars each, which two hundred and forty (240) bonds are held by the St. Louis, Iron Mountain and Southern Railway Company or by R. S. Hayes, trustee, as collateral security for a loan to John D. Beardsley under a written contract, to which the Arkansas and Louisiana Railroad Company is a party, on which loan there is now due the sum of one hundred and nine thousand six hundred and nine dollars and fifty-seven cents (109,609.57),
131 with interest, or thereabouts.

The said John D. Beardsley stipulates that the said Arkansas and Louisiana Railway Company is free of floating debt; any amount of floating debt now owing to employees or others he will himself pay.

This statement does not include the debt due on two new locomotives, on which four thousand dollars have been paid, and the balance spread over four years, which is to be paid by the railway company as the same shall mature at the rate of two hundred and thirty-nine dollars a month.

There are certain lands standing in the name of John D. Beardsley which are not part of the right of way, stations, or other appurtenances of the railroad or necessary for the use of the railroad in its business. As to such outside lands the fifty-one per cent. (51%) of stock hereafter mentioned are not to participate in
132 the proceed*ings* of any disposition of such outside lands which may be made by the company, but the right to such proceeds as appertain*ing* to the said fifty-one (51%) per cent. of the stock is reserved by *the* John D. Beardsly.

This reservation in favor of Beardsley includes lands and hotel at Nashville, but it is understood that ot the reservation of two hundred (200) feet there is not sufficient for the use of the road. No charge will be made to the company by John D. Beardsly for right of way through it if needed.

The contract between the Arkansas and Louisiana Railroad Company and John D. Beardsley, which provided for the construction of a railway, dated the — day of ——, has been cancelled by mutual consent.

Memorandum of Agreement Made this 7th Day of March, 1887, *between John D. Beardsley and Jay Gould.*

The said Beardsley represents that the foregoing statement
133 concerning the stock, bonded and floating indebtedness, and other matters of the Arkansas and Louisiana Railroad Company is correct, on the basis of which this contract is made.

The said John D. Beardsly hereby agrees to sell to the said Jay Gould, by free, unincumbered, and good title, fifty-one (51 %) per centum of the fifty-one hundred and twenty (5,120) shares of the capital stock of the said company, to the end that the said Jay Gould may have a controlling interest therein.

Said Beardsly states and represents that the one hundred and nine thousand six hundred and nine dollars and fifty-seven cents (109,609.57) or thereabouts, the debt due to the Iron Mountain Railway Company, while, as respects the Iron Mountain Company, it is the debt of the said Beardsley and the Arkansas and Louisiana Railroad Company, jointly and severally, yet as between him and the Arkansas and Louisiana Railroad Company he is the
134 principal debtor and the said railway company a mere surety, and that the two hundred and forty (240) bonds held as collateral are the property of the said John D. Beardsly and upon the payment of said debt would belong to him, subject to a certain decree rendered by the United States circuit court in the case of Paul F. Beardsley against John D. Beardsley and the Arkansas and Louisiana Railroad Company, which adjudges one-third of the said bonds and the aforesaid stock, subject to a certain debt, to be the property of Paul F. Beardsley, the correctness of which decree said John D. Beardsley does not assent to.

The said John D. Beardsley also sells to the said Jay Gould fifty-one (51 %) per cent. of the said two hundred and forty (240) bonds of the Arkansas and Louisiana Railroad Company already issued, in the hands of R. S. Hayes, trustee, as collateral for the Iron Mountain debt, subject to the lien of the Iron Mountain
135 Company thereon.

Also sells to the said Jay Gould fifty-one (51 %) per centum of one hundred and forty-four bonds (144) earned, but not yet issued or certified, also subject to the said contract with the Iron Mountain Company.

The said fifty-one (51 %) per centum of stock is to be duly assigned and transferred to the said Gould on or before the first day of April, 1887, at which time the said Arkansas and Louisiana Railroad Company is by the said John D. Beardsley to be made free from debt with the exception of the future debt on the two locomotives and the liabilities under said contract to the Iron Mountain Company.

When the said debt to the Iron Mountain Company shall have been paid by the Arkansas and Louisiana Railroad Company, or if the said Gould shall himself have paid fifty-one per centum thereof, this agreement, on being exhibited to R. S. Hayes,
136 trustee, or the Mercantile Trust Company shall, without further action or order, entitle the said Gould to demand and receive fifty-one per centum of said two hundred and forty (240) bonds, free of any claim of Paul F. Beardsley or other person, and the said John D. Beardsly forty-nine per centum thereof, if the company shall have paid the said debt or if he shall have paid forty-nine (49 %) per centum thereof, and, upon this agreement being exhibited to the Arkansas and Louisiana Railroad Company, said

Gould shall be entitled to have issued to him directly fifty-one (51 %) per centum of the unissued stock when the same shall be issued and fifty-one (51 %) per centum of the remaining first-mortgage bonds earned but not yet issued, subject to the conditions of the aforesaid contract of loan with the Iron Mountain Company.

137 In consideration of the foregoing and in full payment thereof, the said Gould promises to pay to the said John D. Beardsley the sum of fifty-one thousand dollars (51,000), payable on the delivery and transfer of the said fifty-one (51 %) per centum of stock to the said Gould.

It is expressly understood that no part of any of the stock or bonds which under the said decree may have to be paid to Paul F. Beardsley shall come out of the fifty-one (51 %) per centum of bonds or stock hereby sold to the said Gould.

Said John D. Beardsley covenants, as a part of the consideration of this instrument, that he will procure at any time, upon ten (10) days request in writing by said Gould, a ratification of this contract and all of its provisions by the Arkansas and Louisiana Railroad Company.

In witness whereof the parties hereto have set their hands and seals this seventh (7) day of March, 1887.

138 EXHIBIT "B."

Memorandum of an Agreement Made this 14th Day of July, 1887, *Between John D. Beardsley and Jay Gould.*

Whereas an agreement was, on the 7th day of March, 1887, made between the parties hereto providing for the sale by the said Beardsley to said Gould *to* 51 per cent of the 5,120 shares of the capital stock of the Arkansas and Louisiana Railway Company; also 51 per cent. of 240 first-mortgage bonds of the said company pledged to the St. Louis, Iron Mountain and Southern Railway Company or to R. S. Hayes, as stated in said agreement; also 51 per cent. of 144 earned, but unissued, first-mortgage bonds of said Arkansas and Louisiana Railroad Company, all for a consideration of $51,000, to be paid by said Gould when said Beardsley had complied with certain conditions specified in said agreement; and whereas

139 certain of said conditions on the part of said Beardsley remain partially unperformed, but it is the desire and purpose of the parties to complete the purchase and sale of securities provided in said agreement by the delivery of said securities and the payment of said consideration upon the said Gould being fully secured with respect to such obligations of said Beardsley under said agreement as remain in part to be performed:

Now, in consideration of the premises and of the sum of one dollar by said Gould to said Beardsly in hand paid, the receipt of which is hereby acknowledged, said Beardsly agrees as follows: In order to secure and protect the Arkansas and Louisiana Railway Company and said Jay Gould, as owner of said 51 per cent. of its stock, against any and all debts of said company in existence prior to

April 1st, 1887, and against any claims or demands of any
140 description that may affect the title of said company to a clear and undisputed right of way of 100 feet in width (except as to width of right of way through town of Hope) for the entire length of its road as at present constructed, and also against any claim of Vinton Alderman arising out of the sale to said Beardsley of one-half of the stock of the Washington and Hope Railroad Company, said Beardsley will immediately, upon the execution of this agreement, endorse and deliver to A. L. Hopkins, in pledge for the purpose of such protection and security, the remaining 49 per cent. of the stock of said Arkansas and Louisiana Railway Company, & said Beardsley hereby agrees that all his right, title, and interest in and to the 49 per cent. of 240 first-mortgage bonds of said railway company, now held by the St. Louis, Iron Mountain and Southern Railway Company or R. S. Hayes as security for the debt of $109,609.57 or thereabouts,
141 with interest owing to it by said Beardsley, shall be held by said St. Louis Iron Mountain Company in pledge as additional such security and protection to said Arkansas and Louisiana Railway Company and said Gould, and that, as further such security and protection, said Beardsley agrees and directs that all his right, title, and interest in and to the 49 per cent. of the 144 earned but unissued bonds of the Arkansas Railway Company (remaining after deducting the 51 per cent. of said bonds sold to said Gould upon the conditions of said agreement of March 7, 1887), and shall be held by said company upon a like trust and under like pledge; and said Beardsly further agrees that his authority and direction in this behalf to the said Iron Mountain Company or R. S. Hayes and to the said Arkansas and Louisiana Railway Company
142 shall be complete upon the exhibition thereof to said companies respectively and to said Hayes.

In order to carry out the intent of said agreement of March 7, 1887, respecting the transfer to said Gould of the control of the said Arkansas and Louisiana Railway Company, said Beardsly stipulates that within ten days after request made by said Gould he will cause the resignations of the present members of the board of directors to be duly made and effected, and the nominees of said Gould to be duly elected directors in their place and stead.

Said Gould agrees that upon the acquisition of a complete legal title to the entire right of way of the said Arkansas and Louisiana Railway Company, and upon delivery to said Gould of the receipt in full of said Vinton Alderman to the said railway company or his statement that he had no claim or demand
143 against said company, said Gould will release the pledges herein provided and cause said trusts in his behalf and in behalf of the Arkansas and Louisiana Railway Company to be terminated.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

(Signed) JOHN D. BEARDSLY. [SEAL.]
JAY GOULD. [SEAL.]

On October 8th, 1888, was filed the following answer to the supplemental bill on the part of the St. Louis, Iron Mountain and Southern Railway Company:

For answer, the St. Louis, Iron Mountain and Southern Railway Company says:

1st. That as to the matters and things in the said bill which charges certain things against its codefendant, John D. Beardsley, this defendant knows nothing and has no knowledge therein
144 upon which to form a belief, and, furthermore, has no interest whatever therein.

2d. That as to the amount due by the Arkansas and Louisiana Railway Company to this defendant, it admits that it is true and that the said indebtedness amounts to the sum of $——, with interest thereon, secured by mortgage, as stated in the said supplemental bill.

3d. That as to the charge that the St. Louis, Iron Mountain and Southern Railway Company is taking any part in this litigation, either for or against the complainant, this defendant emphatically denies and says that as between the parties hereto it has acted with full and perfect good faith in every respect.

4th. This defendant would say that it has regularly made demand upon its codefendant, the said John D. Beardsley, and the Arkansas and Louisiana Railway Company when the install-
145 ments of interest and principal became due and payable under and by the terms of the mortgage as aforesaid, and that it has in no manner neglected to demand and collect the same when it was due and payable. It further says, in that regard, that up to the time of the filing of the supplemental bill in this cause it has had no cause of complaint against its codefendants, for the reason that the contract under which the money was loaned has duly and fully been complied with by the parties thereto.

5th. That as to what amount was in the treasury of the Arkansas and Louisiana Railway Company at the time as charged in the said supplemental bill, this defendant knows nothing and had no knowledge upon which to form a belief. It gave no consent either to John D. Beardsley or the Arkansas and Louisiana Railway Company to pay out any moneys that were in the treasury of the said railway company, for the reason it knew nothing about the
146 same, and, as the said railway company had complied with its agreement with this defendant, it did not concern itself about the management of the said Arkansas and Louisiana Railway Company or the disbursements of its own funds.

6th. This defendant in no manner consented to any of the acts as charged in the said supplemental bill and was in no manner a party to the same and has no concern or interest therein further than its mortgage and the deed secured thereby.

7th. This defendant most emphatically denies that its property or franchises are leased to the Missouri Pacific Railway Company, or that it has any connection with the same other than that of a connecting and co-operating carrier in the business of common

carrier. It denies that the Missouri Pacific Railway Company has absolute control of it, directly or indirectly, but says that it
147 is a corporation duly organized and existing under the laws of the State of Arkansas, maintained, supported, and carried on by its officers duly elected and empowered under the said laws; that it is organized separate & distinct from the Missouri Pacific Railway Company, and that, while it is acting in connection with the said Missouri Pacific Railway Company, co-operating with it in its business, it is, nevertheless, separate and distinct, wholly & completely, in all of its business relations. It denies that Jay Gould bought fifty-one per cent. (51%) of the stock of the Arkansas and Louisiana Railway Company for its use and benefit, or that this defendant has any interest or claim in the same, but says that the said purchase was made by Jay Gould with his own means and in his own interest and for his own benefit and none other.

8th. This defendant further says that it has no connec-
148–150 tion with or interest in the affairs or property of the said John D. Beardsley or the Arkansas and Louisiana Railway Company other than the debt secured by mortgage as referred to in the supplemental bill; and, having fully answered herein, prays to be discharged with all its costs in this behalf.

DODGE & JOHNSON,
Att'ys for Def't.

151 UNITED STATES OF AMERICA, }
Western Division of the Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the western division of the eastern district of Arkansas, begun and holden on Monday, the 22d day of October, anno Domini one thousand eight hundred and eighty-eight, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, on November 1, 1888:

Comes the complainant, by Jones and Martin, Esqrs., his solicitors, and files herein his replication to the answers of Jay Gould and the St. Louis, Iron Mountain and Southern Railway Company to the supplemental bill.

Replication to answer of Jay Gould to supplemental bill is as follows:

152 This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer of the said Jay Gould, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, & that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this re-

pliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

JONES & MARTIN,
For Complainant.

Replication to answer of St. L., I. M. & S. R'y Co. to supplemental bill is as follows:

153 This replication is the same as the preceding one, except the name St. Louis, Iron Mountain & Southern Railway Co. is used instead of the name of Jay Gould.

And on November 5, 1888, as follows:

Comes the complainant, by Jones and Martin, Esqs., his solicitors, and it appearing that the defendant The Arkansas and Louisiana Railway Company has been duly served with process of subpœna herein on the 6th day of August, 1888, and now having failed to appear, plead to, or answer said supplemental bill of complaint herein—

It is therefore ordered, on motion of said solicitors for the complainant, that said bill be, and the same is hereby, taken as true and confessed by the said defendant, The Arkansas and Louisiana Railway Company.

154 And on January 2, 1889, as follows:

Come H. H. Wheeless, J. D. Beardsley, *et al.* and file herein their separate affidavits.

Which affidavits are as follows:

H. H. Wheeless, being sworn, says:

I am the auditor of the Arkansas and Louisiana Railway Company and have been since about the 15th day of January, 1884. I am familiar with the financial affairs of the company and know when and on what accounts money has been paid out by the company. I know that no money has been paid by this company on account of the railroad which J. D. Beardsly is building in Louisiana. J. D. Beardsly has used no money of the company to pay his private expenses or those of his family or for any other private purpose so far as I know. I

155 have heard the affidavit of J. D. Beardsley in this case read and his statement in regard to the allowance of additional salary for managing the road is true so far as the same relates to myself & his interview with me in regard thereto. I have kept an accurate account of all sales, rentals, and moneys arising from the lands belonging either to J. D. Beardsley or this company, and am positive that all money arising from any of these sources has gone directly into the treasury of the company and been used by it.

J. D. Beardsly's statement in his affidavit as to the payments made for costs and expenses in the original suit between P. F. Beardsley and J. D. Beardsley, and also in regard to the money paid for canvassing in Louisiana, are correct. J. D. Beardsley bought and paid with his own money this summer for about $5,000.00 worth of steel rails and other track materials which was

156 badly needed and which the company was not at the time

able to pay cash for. He delivered the rails and material to the company and it is now using the same in its track.

When J. D. Beardsley bought the old scrapers and construction tools from the company he asked me to fix a price on the scrapers. I suggested $3.00 and he accepted them at that price. I think the tools were sold for their full value. I do not think they could have been sold to any one else for anything. They were of no use or value to the company.

I regard the renting of the old engine to J. D. Beardsley as an advantageous arrangement both for the company and the engine. Beardsly asked me what would be a fair rent for it. I named the price and he accepted it. I think he is paying the full value for the use of it.

157 While J. D. Beardsly has been absent in Louisiana he has been in constant communication with the officers and employees of the company by wire and has been present at the office of the company more or less every week. I do not think he has neglected the business of the company. He has had no private business of importance, so far as I know, until he begun the construction of the road in Louisiana, and if he has had any other private business since he begun that I am not aware of it.

P. F. Beardsly had his headquarters at Nashville and was assistant superintendent of the road and had general charge of the affairs of the road at Nashville while nearly all of the discriminations were being made and knew that it was being done. If he ever objected to it I never heard of it, and I think I would have heard it if any such objection had been made; indeed, I know that these discriminations had his approval.

158 J. D. Beardsly's statement in his affidavit as to the business at Nashville during the years 1884, 1885, and 1886 is correct.

J. D. Beardsley's statement in regard to the building and sale of the telephone from Washington to Columbus is correct. His statement in regard to the survey of the line north from Nashville is also correct, as is his statement in regard to the presents and cost thereof made to the employés of the company.

I do not believe that J. D. Beardsley has exercised any improper influence over the directors of this company, nor do I believe that he or any other man could do so.

The lands which were granted to the Washington and Hope Railway Company by the State of Arkansas were sold and the deed delivered and the money paid therefor before the institution of the original suit of Paul F. Beardsly *vs.* John D. Beardsley *et al.* in the Federal court, and the money received therefrom was used in purchasing rails for the company, which the company used in its track.

159 W. H. WHELESS.

Sworn to and subscribed before me this 10th day of November, 1887.

J. M. SIMMS, *N. P.*

And on January 3, 1889, as follows:

Comes the complainant, by Jones and Martin, Esqrs., his solicitors, and the defendants, by J. M. Moore, Esq., their solicitor, and it is by consent ordered that the affidavit of J. D. Beardsley, attached to his deposition this day filed, and the affidavits of H. H. Wheless, William H. Carruth, A. B. Williams, Henry B. Holman, Joel D. Conway, and Robert B. Williams, this day filed, be read as the depositions of said parties at the hearing of this cause.

(Signed) JONES AND MARTIN,
For Complainant.
J. M. MOORE,
For Defendants.

160 The affidavit of Carruth is as follows:

WILLIAM H. CARRUTH, being duly sworn, says:

I am the president and treasurer of the Arkansas and Louisiana Railway Company, and have been ever since the organization of the company. I am familiar with the affairs of the company both financial and otherwise, having handled all the money of the company. I know that the funds of the company have never been squandered or misappropriated by J. D. Beardsley or any one else. None of the funds of the company have ever been used by J. D. Beardsly in the construction of his railroad in Louisiana, nor has he used them in paying the private expenses of himself or his family.

All of the earnings of the road have been rigidly applied to payments for improvements, repairs, current expenses, and just
161 debts of the company, of the money on hand on the 12th day of April, 1887. I am informed by the auditor of this company that there was due the St. Louis, Iron Mountain and Southern Railway Company the sum of $6,400 on account of freights which this company had collected for said St. Louis, Iron Mountain and Southern Railway Company on goods shipped from St. Louis to Hope and thence over this company's line, and there was paid out of said fund $5,800 and the balance thereof was applied to the payment of claims allowed by the board of directors in favor of J. D. Beardsley and other claims against the company.

The books of the company have been at all times kept so as to show all of the receipts and disbursements of the company, and in such a manner as to show the condition of the financial affairs of the company at a glance.

For some time after the decree in the Federal court was
162 rendered I permitted Paul F. Beardsly to examine the books of the company. After a time I was credibly informed and from that information believe that he used such information as he gathered from the books to the detriment and injury of the company. I was informed and believe that he disclosed the private business and affairs of the company on the streets of Washington & elsewhere, and that he used his knowledge of the affairs of the company, gained from his examinations of the books, to defeat the

efforts of the company to procure money with which to extend the road, which it was then attempting to do; that he communicated with numerous capitalists with whom this company was negotiating for money to extend its road, and defeated all efforts of the company to procure money for that purpose. After the decree of the Federal court had been superseded, I was informed by counsel that Paul F. Beardsley no longer had the right to examine the books
163 of the company. However, I continued to grant him access to them till, as I now remember, on the 10th day of August, 1887, when I first refused to permit him to see them. I may have declined to permit him to see them before that date, but, if so, I do not now remember it. I was induced by the reasons hereinbefore stated to refuse to permit him to examine the books, and in doing so it was not my purpose or intention to disregard said decree or put myself in contempt of said court, & I do not now think that I did so.

The Arkansas and Louisiana Railway Company borrowed from Mrs. Sue C. Beardsley the sum of $1,200.00 on the 1st day of January, 1886, and, while the books of the company show that this money was repaid on the 30th day of March, 1886, in point of fact, the money was not paid to her, but was held by the
164 treasurer of the company and used by it during the whole of the year 1886, and the allowance of $120 in her favor as interest is a just and proper charge against the company.

The treasurer's books are kept and the work done on them in the office of Baird and Carruth, merchants, of which firm I am a member. I have read the affidavit of William P. Agre, who is the bookkeeper of Baird & Carruth and has been for some years, in regard to the cutting of the two leaves from the company's ledger, and the facts therein stated are true to the best of my knowledge and belief.

I here now again deny any intention, purpose, or design to defeat or defraud Paul F. Beardsly out of any right or interest that he may have had or may now have in the said railroad or its properties, or that I have ever, directly or indirectly, conspired with
165 John D. Beardsley or any one else with that or any other intention or purpose. The company's interests are my interests, and I have done and am doing all in my power to further and foster them.

It is within my knowledge that the condition of the road has been very much improved since the rendition of said decree, and that it is now in better condition than it has been at any time since the organization of the company. It is my opinion, based upon my knowledge of the condition of the road, that the condition of the road-bed was such that the company could not have handled the business which it will be called upon to do this season without the expenditure of a large amount of money thereon and the consequent great improvement thereof.

The company is now in better condition generally as to its
166 properties and finances than it was then, and owes less money than it did at that time.

I have heard the affidavit of J. D. Beardsley in this case read and

his statement therein in regard to the conversation had with me in regard to the allowance of the additional salary as general manager of this road is correct.

Cross-examined:

Please examine voucher No. 841, of date Feb'y 25, 1886, it being an account payable of the Arkansas and Louisiana Railway Company to Mrs. Sue C. Beardsley, and say whether the signature of Sue C. Beardsley is her genuine signature to the receipt of said account.

I am not very familiar with Mrs. Beardsley's signature, but think this is her genuine signature.

Q. Will you append a copy of said voucher to this deposition?

A. I will, and here now attach a true copy thereof.

Re-examined:

167 Q. Please state fully the circumstances in connection with this loan and the repayment thereof to Mrs. Beardsley.

A. This was money which Mrs. Beardsley received from her mother's estate, as I understood, and she loaned it to the Arkansas and Louisiana Railway Company. When the application was made to have the road put into the hands of the receiver it was desired that this $1,200, which was regarded as a trust fund, should be placed in such condition that it would not be complicated with the affairs of the company. With this view the money was entered to Mrs. Beardsley's debit on the books of the company, and she was credited with the $1,200 on the books of Baird and Carruth.

However, the money was retained in the treasury of the company and was constantly used by the company, and in carrying forward the cash in the hands of the treasurer this money
168 was accounted for as company funds till the expiration of a year from the date at which it was borrowed, so that while it stood on the books of the Arkansas and Louisiana Railway Company and on the books of Baird and Carruth as the money of Mrs. Beardsley it was in fact for that length of time the money of the company and was constantly used by it. The receiver was not appointed on that application. If he had been the money would have been paid to Mrs. Beardsley at once. The $120 interest was not entered on the books till the expiration of a year from the time the money was borrowed. If the money had been repaid to Mrs. Beardsley on the date that it appears to have been on the books I would not have allowed her credit for the interest on the same for the full twelve months.

Q. Has J. D. Beardsley kept a personal or private account
169 on your books separate from the railroad account, and for how long a time?

A. Yes, sir; he has kept a personal account on our books since his arrival here, in 1879, which has been a private account and separate from the railroad account.

Q. Please examine this account and find what amount of money,

if any, J. D. Beardsley drew on this personal account for the expenses of his family from July 6th, 1886, to Nov. 1st, 1886, inclusive, and say, if you can, what part of it was taken or drawn for his and his family's expenses while absent from home during that time.

A. I find that J. D. Beardsley drew during that time about four hundred and fifty dollars which I can trace as being used for his family and himself at Washington. In addition, that on July
170 15th I find that he drew seventy-five dollars for expenses of his daughter going North in advance of his family. On July 27th he drew five hundred and fifty dollars on his private account for expenses of himself and his family going to Canada, & they left for Canada two or three days later, perhaps. On September 11th sixty dollars were sent to his family by his orders. About the 20th of September he went to St. Louis from Washington with me and while there I gave him two hundred and fifty dollars for his family to come home on. No part of this money was ever returned or ever charged to the railroad company.

Q. Can you state what time J. D. Beardsly left Washington to go North in July, 1886, with his family and how — he was gone?

A. I can say from my entries in my book at that time that J. D. Beardsley was in Washington, Arks., in July, 1886, as late
171 as the 27th day and, I think, two or three days later. I say I think, because I see by my books that his wife got money on the 29th, and, if my memory is correct, she went away with him. My books show that J. D. Beardsley was here again as early as September 9th at least, but how much sooner I cannot tell.

He went with me to St. Louis about September 20th, 1886. He was then on his way to New York city.

Accounts Payable.

Voucher No. 841.

WASHINGTON, ARK., *Feb'y* 25, 1886.

Arkansas and Louisiana Railway Company to Mrs. Sue C. Beardsley, Dr.

188–. Address, Washington.

For amount of cash borrowed Jan'y 1, 1886, and to be credited in open account..... $1,200 00

Examined and approved.

H. H. WHELESS, *Auditor.*

172–246 Received, 2, 25, '86, of the Arkansas and Louisiana Railway Company twelve hundred dollars in full of the above account.

SUE C. BEARDSLEY.

WM. P. AGAR, *Witness.*

W. H. CARRUTH.

(Sworn to.)

247 *Deposition of J. D. Beardsley.*

J. D. BEARDSLEY, being duly sworn, testifies as follows:

My name is J. D. Beardsley. I am one of the defendants in this case. I have read again carefully my affidavit filed at the preliminary hearing of this cause. Everything therein set forth is absolutely true, to the best of my knowledge and belief. As it covers most of the complaint, I adopt it as a part of my testimony, and attach hereto. I have also read Mr. Paul Beardsly's deposition. His statement that out of the net earnings of the road from Jan-
248 uary 1st, 1886, to October 1st, 1887, amounting to over $65,000, not more than $2,000 had been paid on account of its indebtedness to the Iron Mountain Railway Company and his assertions as to the increase of the Iron Mountain debt during that time are both disingen-ous and untrue. The facts are: By the settlement contract made with the St. Louis, Iron Mountain and Southern Railway Company made in April, 1885, there was found due that company by the Arkansas and Louisiana Railway Company the sum of $119,609.54, with interest from the first day of July, 1885. It was provided in that contract that a payment of $12,000 should be made yearly, beginning with the year 1886. Under this contract, therefore, there was due to the St. Louis, Iron Mountain and Southern Railway Company on the 31st day of December, 1886, the sum of not less than $12,000 and a like sum on the same day of each succeeding year until
249 the entire debt, principal and interest, should be paid. On the first day of January, 1886, there was due the Iron Mountain Company the sum of $123,299.24, instead of $113,299.24, asserted by him. On that day, January 1st, 1886, I paid the Iron Mountain Company the sum of $10,000, which payment was therefore made twelve months before it was due, according to the strict construction of the contract. On the last day of December, 1886, I paid the remaining $2,000, making the entire payment for that year. Of the $10,000 paid on the first day of 1886 the greater part was borrowed money. $1,200 of this money was borrowed from Mrs. J. D. Beardsley; between $4,000 and $5,000, to the best of my memory, was borrowed from the Little Rock Oil and Cotton Compress Company, and about $— was borrowed from Mr. W. H. Carruth. All of these sums were afterwards paid from the earnings of the road after
250 the first of January, 1886. The careful examination he has made of the books must have shown all of this to Mr. Paul Beardsley, and if he was as fair as he has been diligent he would not have stated these and many other things that he has done. During the time that I was in the management of the road no payment to the Iron Mountain on account of the debt was ever past due. The disposition of every cent of the earnings of the road —, as shown by the books of the company and Mr. Paul Beardsley admits. In regard to the payments for taking depositions and the expenses incurred by the officers of the company in the

defence of this supplemental bill, the company was a party to the case. It was sought to take its property out of its hands and put it in the hands of a receiver. It was necessary for it to be represented by counsel and for its officers to go to Little Rock in connection with the case. It was
251 necessarily subject to such expenses as a suit entails upon all the parties to it, whether they are right or wrong. I paid from my private resources more than twice as much as was charged to the company. The facts in reference to the Louisiana expenditures are well known to Mr. Paul Beardsley. Some parties in Louisiana had taken a charter in that State for a railroad under the style of the Louisiana North and South Railway Company from the line of Arkansas south through the towns of Homer and Gibsland to the city of Alexandria, Louisiana. This charter covered the route it was desired to occupy with the Arkansas and Louisiana Railway Company and was a source of considerable anxiety to me. The Louisiana people made strenuous efforts to raise money to build their road, but did not succeed. Some time in the latter part
252 of 1885 Mr. A. D. Hammett opened *with* a correspondence with me in the interest of the Louisiana road, of which he was president. Very early in 1886 a contract was entered into between the two companies, Mr. Hammett signing for the Louisiana Company and I for the Arkansas and Louisiana railway. It was agreed that the Louisiana Company should be turned over to the control of the Arkansas and Louisiana Railway Company, and ultimately consolidate with it; that its name should be changed to the Arkansas and Louisiana Company; that when built it should be known and operated as the Louisiana division of that road. It was agreed that the debts of the Louisiana Company, which were trifling, should be assumed and paid by the Arkansas and Louisiana railway. The original of this contract was left among the papers of the Arkansas and Louisiana
253 Railway Company when that road was delivered to the receiver. The incentive for making it on the par- of the Louisiana Company was my promise that the Arkansas and Louisiana railway would endeavor to build a section of the road at once and their belief that we would be able to do so with the assistance that they could give us. We desired to have the Arkansas and Louisiana Railway Company get control of a charter which in its hands strengthened it much, but in other hands might have shut us out of Louisiana. The Louisiana Company, at a meeting of the stockholders on the 22d of April, 1886, ratified this contract. They also changed the name of their company in accordance with the agreement and elected me manager. They undertook to have a tax voted in Claiborne parish to aid us in the construction.
254 This tax was actually voted by Claiborne parish to the Arkansas and Louisiana Railway Company, but from some informality in the ordinance it was afterwards found to be worthless. It would, in my judgment, have resulted in giving the company a sum of over one hundred and fifty thousand dollars. In accordance with my understanding with the Louisiana people I

opened negotiations in New York and continued them during the summer of 1886 to obtain money for the building of the road. Although the circuit court of the United States had made a special order to negotiate loans and borrow money for that purpose, Mr. Paul Beardsly worked industriously to defeat everything of that kind that came to his knowledge, and he seemed to devote his whole time to that purpose. I believe the money for the Louisiana construction would have been obtained in one case had not
255 Mr. Paul Beardsley discovered the name of the party with whom we were dealing, by reading a private telegram in our office, and afterwards frightened off the capital by threats of litigation.

During this time I had no idea of undertaking this construction or being interested in the road in any other way than through the Arkansas and Louisiana railway. It was during this time that the $50 was paid Mr. Calhoun for assisting in canvassing for the tax. The efforts to raise money were continued during the early part of 1887 and were finally abandoned. The Louisiana Company, finding that we were unable to raise money to build any part of the road, had a meeting of their stockholders and cancelled the contract, changed the name of their company back to the Lou-
256 isiana North and South Railway Company, and entered into a contract with J. R. Jones and others of Shreveport, Louisiana, to build the road. This contract also failed. After I sold a portion of my stock to Mr. Gould I received quite a large sum of money from him. This money was received, I think, in July, 1887. In the latter part of that month or the first of August I went to work upon the construction of the road upon my own account. Until after I began the construction in Louisiana I have never at any time during my connection with the Arkansas and Louisiana railway or with the roads preceding it gone to New York or even to St. Louis upon my personal or private business, nor have I been carrying on or had any personal or private business outside of my railroad business excepting, perhaps, the purchasing of cotton seed at the depots of the road for the cotton-seed people, or something of that character, on the line of the
257 road. The contract with the Louisiana North and South Railway Company was never ratified by the Arkansas and Louisiana Railway Company. Referring to the scrapers sold the Louisiana North and South railway and the locomotive rented that company, I was offering to sell this locomotive for $2,500 on account of the Arkansas and Louisiana Company, as we had no use for it. This I considered its full value & I was unable to dispose of it at that price. It had not been overhaul-d in shop for years and was in a very bad condition when sent, though fixed up as well as could be done with hand tools used by the engineer. We had no machinist. The rental of $75 per month was a good price, about twenty-five per cent. per annum of its full value. It had to be constantly worked on to keep it running and the expense
258 incurred in this way was considerable over its rental. The engine which Mr. Paul Beardsley refers to as rented to the

Iron Mountain is a new, heavy engine with many improvements upon it and was worth near $10,000. Without an accident it can be run for years with no repairs. To those who have work for it to do it would be cheaper at $10 per day than the one I rented to the Louisiana Company would be at one dollar and fifty cents per day. Nevertheless, $10 per day is a high rent for it. The Louisiana Company has been renting two locomotives from the V., S. & P. R'y Co. for about a year; these engines were sent us from the company shops after being put in thorough order, and the rent charged us is $2 per day for one, $2.25 per day for the other. Either of these engines, considering the condition in which they were delivered to us, is worth more rent than that we had from the A. & L. Co. The rental of these was fixed
by the general manager of the system, Mr. John C.
259 Gault, of Cincinnati, without any suggestion from us.
The price for the scrapers was more than they were worth. Referring to the salt, the claim that I should be made to pay the freight on the salt is both ungenerous and dishonest. Mr. Paul Beardsley is perfectly cognizant of the whole transaction—an arrangement in the fall of 1885 between the A. & L. Co. and some of the merchants of Nashville by which it was agreed that salt should be sold in Nashville at $1.50 per barrel. To do this the merchants had to lose about twenty-five cents per barrel on the cost for the salt and the road about the same amount for freight. The railway company contracted for what salt it estimated would be needed, believing that by taking so much at one purchase a reduction in the price would be obtained, and it was bought in this way about
five cents per barrel under the market. While the company
260 purchased the salt it was not out any money in the transaction, as the merchants paid for each delivery when due. The object of this transaction was to draw trade, particularly cotton, to Nashville from territory that had before been controlled in Texarkana, Paris, Texas, Fort Smith, and Hot Springs. The result was considered so satisfactory that in the fall of 1886 it was considered best to repeat it. The market price of salt was at that time about $1.05 in St. Louis. The freight to Nashville from St. Louis was, I think, 90 cents per barrel, which made it cost, laid down at Nashville, about $1.96 per barrel. It was decided to sell the salt at $1.25 per barrel. We agreed that the Arkansas and Louisiana railway should carry it over its road free and the merchants agreed to lose the balance. The Iron Mountain railway made us a rate to
Washington, Arkansas, as low as the rate then in force to Hope
261 on their line. This enabled us to get twenty-five per cent. of
their freight and at the same time carry out our agreement with the Nashville merchants. We were at this time having litigation about alleged discrimination, and it was thought best that the railway company should not be even nominally interested in the salt. My name was therefore used as a convenience. I contracted for the salt and it was shipped to me, but on arrival was delivered to the merchants and paid for by them, as had been done the previous year. I had no personal interest whatever in the transaction and

made no profit at all and never intended to do so. In fact, I made a small loss by the breaking of some of the barrels and the wasting of the salt. The loss should have been charged to the company, but it was never done. The charge that I went to New York or elsewhere on my personal business and charged my expenses to
262 the company is untrue. The assertion made and repeated by Mr. Paul Beardsley in his deposition, that he got his information in regard to my going on my personal business or any other information about business from me in frequent conversations had with me on trains and elsewhere, is absolutely without truth. From the day Mr. Paul Beardsley instituted this suit until the present time I have been compelled to recognize that he was a bitter and malignant enemy. He has told me that he would stop at nothing to defeat my plans to raise money, or to defeat and injure me in any possible way. I have been met with and shown by personal friends and by persons with whom I have been dealing his efforts to injure me financially and morally. Knowing this, I have endeavored to avoid him, and when he came and sat down beside me on one occasion on a train I got up and left him the seat. He spoke to me once on the depot
263 platform at Washington entirely in reference to his suit, and once again in New York on the same subject. On both occasions he talked about his anxiety to compromise. On the first I heard what he had to say without making more than a general answer. On the second occasion in New York I told him I would make no proposition, but would consider any he would make. He made one, which was a proposition that I should give all the decree in the case allowed and associate him with me in all future operations. When I declined this he got very angry, threatened me with what he said Judge Caldwell was going to do, and said he would defeat and ruin me. Outside of these two conversations, I have confined myself to monosyllables with him.

Referring to the shipments of shingles and coke, the coke was needed by a small foundry which did a great deal of
264 work for the road and was unable to buy as much as a car-load. Mr. Paul Beardsley, while in the employment of the road, asked me to bill him a car-load to sell as wanted to the foundry. I did so. After he left the road the foundrymen came to me and asked me to get a car in the same way. I did not consider it desirable for the railway company to sell the coke in small lots, so I did so. The car-load of coke lasted the foundy two years, some being still on hand when the road was turned over to the receiver. It was peddled out in small lots as wanted. What is said about the coke is true. About the shingles, I brought some of them to Washington when they were wanted and permitted Mr. Paul Beardsley, when with the road, to have some taken to Nashville. I did not sell any to the road at $1 profit. The intention was to sell them at cost. They were probably sold
265 at $1 above first cost, which would about cover freight on Iron Mountain and waste. These matters occurred when I had possession of the road as lessee. There does not appear to be

much merit in Mr. Paul Beardsley's complaint that he had to pay freight on furniture, &c. The vouchers show that I was charged and paid freight on shipments to myself in furniture, &c., when I was in possession of the road. I have paid both freight and for use of the telegraph wire over the road since and have no complaint to make. Referring to the allowances, so called, made by the directors of the Arkansas and Louisiana railway and paid me by the treasurer, I have to say the account for $277 of June 27th, 1887, voucher 1300, was for furniture taken out of my house, which I had bought and paid for with my private money and put in the hotel at Nash-
266 ville. It is still there in use. The larger part of it is the best furniture in the hotel. It was charged at a fair and reasonable price and I have never been paid one cent for it except by this voucher. The account, $172.50, March 30th, 1887, was for a desk and other material furnished the railroad, and which I bought and paid for with my private money, & for which I have never been paid except on this voucher. The account for $3,897 for salary due me by the Washington and Hope railway and the Arkansas and Indian Territory railway was for services rendered these companies and was actually due and unpaid, and I have never been paid except on this voucher. The acc't for $9,696.60, voucher 1323½, was for the bonus notes earned by me for building the Washington and Hope railway. They belonged to me. The amounts charged were actually collected and used by the railway companies, and I
267 have never received payment except on this voucher. The allowance for additional salary, voucher 1325, has been explained in my affidavit & that of the auditor and directors. I think it was just and within the discretion of the directory. It is not claimed by the plaintiff that these moneys were not owing me originally, except voucher 1325, but he insists that I have in some manner been deprived of my right to be paid by the decree. I do not understand or believe this to be the case. In the original suit I did not attempt to obtain a settlement of my claims against my codefendant, The Arkansas and Louisiana Railway Company. I furnished my counsel a memorandum, made in his office from memory, of some of the amounts then owing me by the Arkansas and Louisiana Railway Company. My intention was to show that if, as Mr. Paul Beardsley alleged, I had a wrong credit from the
268 property of the company that there was ample indebtedness of the company to me to more than set off any such claim, even if found correct. If this memorandum was ever filed as an account I am not aware of it. When the matter was referred to the master it seemed to me that no distinction whatever was made or recognized between the moneys of the companies and those of the lessee. I then prepared an account against the company, in which was included most of the items covered by these so-called allowances, and submitted to the master. After examining it he advised me that he could not consider it, because it was outside of the record. Referring to the land which is claimed to belong to the Arkansas and Louisiana Railway Company, as well as the land bought through John Bell, not one dollar of the money used in purchasing those

lands came from the revenues of the railway company,
269 unless they may have paid a small balance on them since the receiver took possession of the road. The lands at Ozan were paid for by me out of the moneyes belonging to the lessee. The lands bought through Bell were partly paid for from the same source and partly from the proceeds of the bonus notes. The reason why the impression copies of the vouchers upon which the allowances, so called, were not copied in their regular order, as I remember now, is, it was ordered by the directory that these vouchers should be approved by the president, and it was desired that the impression should show that they were so approved. After being made they were sent to the president for his approval, and were not returned to the auditor at once, as they should have been, and were afterwards overlooked until about the time I had occasion to draw the money. Mr. Paul Beardsley's statement in regard to Mr.
270 Garrison making an inspection of the road & property of the Arkansas and Louisiana railway with a view to making a reliable report upon it and that I went to New York to meet Mr. D. E. Garrison are untrue. The Garrisons are personal friends of mine. Young Mr. Garrison was on — trip to Galveston for his health and stopped over in Washington to pay me a social visit. There was no business connected with the visit at all. Mr. Paul Beardsley came into my office at the depot and asked Mr. Garrison, who was a comparative stranger to him, to come outside, as he wished to speak to him. When Mr. Garrison came in he seemed a good deal annoyed. He said that Mr. Paul Beardsley had warned him against having anything to do with me or the road, & had said a good many malicious and defamatory things about me; that he did
271 not want to talk with him or hear his talk, and got away from him as soon as he could. I never went to New York for the purpose of meeting D. E. Garrison there, though I have occasionally met him in New York when there. It is not true that I left Washington about July 20th, 1886, with my family and was absent until September 12th, and that after remaining about a week or ten days went away again and did not return until some time in November, and that the voucher 1103 for $100 and voucher 1165 for $318, charged the company, were used by me for personal purposes. I left Washington with my family about the 30th of July; I left them in Canada and went to New York, where I arrived about the 20th of August. I remained there on business for the company for perhaps a little over two weeks, and got back to Washington about September 8th. I left there September 20th and went back to New York on business—not to Canada. I
272 returned to Washington some time in October, probably about the 4th or 5th, and returned again to New York on business during the latter part of that month. My family joined me in New York before my return home in November and came home with me. I paid their expenses and my own while with them out of my private funds; the cost of their summer and my expenses with them were over $800.

J. D. BEARDSLY.

(Sworn to.)

My name is J. D. Beardsley; I am the manager of the Arkansas and Louisiana railway, and have been the manager of this road and the roads which preceded it since they were first built, in 1880 and 1881. I have read the complaint of Paul F. Beardsly in this case. He made the same complaint, almost exactly, and instituted suit and asked for a receiver in the circuit court of Hempstead county
273 last month. Every point in this complaint was patiently and exhaustively heard by the court. Three days were consumed in hearing testimony, both written and oral, and in cross-examination. The court refused his petition, and he took a nonsuit. The allegation that under the term of the contract of settlement with the Iron Mountain railway all the net earnings of the Arkansas and Louisiana railway except allowances for necessary repairs and improvements to keep the road in good running condition does not state the case correctly. At the time this contract was made it was well known to all the parties that the road was in a very incomplete and unfinished condition. Three-fourths of the road had not then been ballasted or surfaced. Part of it was only half tied—that is, the ties were four feet apart instead of two feet. Eighteen miles of the track were laid
274 with old iron rails taken out of the Iron Mountain track as unserviceable. Many of the openings were bridged over on cribs of ties. Mr. R. S. Hayes, 1st vice-president and general manager of the Missouri Pacific railway, with whom this contract was made, had a few days previously sent Capt. Meade here to examine the property. Capt. Meade made a careful and minute examination and had reported very fully to Capt. Hayes. The belief was that all the earnings in excess of $12,000 not consumed in operating expenses would be required on the road for some years to come to put in the rest of the ties, ballast and surface the track, put in bridges, and replace the worn-out iron, and in order to permit the road to do this the contract was made as it reads, it being imperative only that $12,000 should be paid annually. The allegation that I was acting for Paul F. Beardsley, the complainant, in making this
275 contract and intended to include him or did include him under the term "J. D. Beardsley and associates" is not true. I made the original draft of the contract myself in Capt. R. S. Hayes' office after consulting him and while he was present. At that time I had never imagined that Paul F. Beardsley pretended to claim any interest in the property. The endorsement made on the back of the contract, assigned one-half of it to Mr. George C. Smith, shows who are intended by the term "associates." I declare most positively that Paul F. Beardsly was not meant or thought of in that connection by me. Mr. R. S. Hayes in his testimony in the case swears that the term "associates" was not intended to include Paul F. Beardsley, so far as he knows. I am also advised and informed by the authorities and by the general solicitors of the Iron Mountain that
276 complainant has never been recognized by them as one of the associates. They take no interest or action in the matter and have not done so. The declaration that on the 12th day of April, 1887, the treasurer's books showed a cash balance on hand of $22,000 conveys no information whatever in regard to the financial

condition of the company on that day, unless accompanied by a statement of its matured debts on the same day. By a reference to the books I find that $6,400 of the money on hand that day belonged to the Iron Mountain railway, having been collected from them for their freights on goods delivered us with bills for collection. Other accounts and bills outstanding and due were coming regularly, and may have amounted to as much as the balance.

The allegation that I have expended large sums of money belonging to the company in expenses for myself and others in attempting to negotiate loans for and in arranging to build a
277 road in Louisiana with which the Arkansas and Louisiana has no connection is untrue. The facts are that the Arkansas and Louisiana Railway Company has been most anxious to extend its road north to Fort Smith, about 140 miles, and south to Alexandria, La., about 180 miles. I have regarded this as vital to the interests of the company, and I have constantly and persistently endeavored to negotiate for the money to carry this out. I have gone frequently to New York and elsewhere on this and other business of the company and in such cases have charged them with my proper and actual expenses only. The people of northern Louisiana were very desirous to assist us in order that they might get this road built, and citizens of Claiborne parish, Louisiana, friendly to the enterprise undertook to have a tax voted in aid of the enterprise. This tax would have amounted to from
278 $150,000 to $200,000, as near as I could *be* estimate. Parties in New York agreed to take the matter up and furnish or obtain the money for the enterprise if the tax should be voted. During these negotiations some of the parties in Louisiana came here on this business. I caused the company to allow them the money actually paid out for expenses—about $20 in each case, I think. I also caused the company to pay $50 for services in canvassing for the tax. The tax was voted, but some informality was discovered which rendered it worthless. Our friends in Louisiana had spent so much time and money in the canvass that they were not willing to undertake it over again.

I continued to negotiate in New York, but the complainant in this case, learning, by seeing our papers in the office at Washington, the name of one of the parties in New York who had agreed
279 to obtain money, wrote warning him that he would become involved in litigation if he furnished any money. A copy of this letter was sent to me. He also caused a broker to offer the stock and bonds of the company for sale at a nominal price in New York city, and, although he had no stock or bonds that he could sell or deliver, the effect was very injurious to the credit of the company, and it was probably done for that purpose. The complainant has told me in New York and in other places that he intended to prevent and defeat any negotiation we might make for money to extend the road, unless I would abandon my appeal to the Supreme Court of the United States and associate him with myself in all future attempts at construction, and he said he would use any and all means within his reach to carry out his threat.

280 In all these negotiations I was acting in good faith and for the company. After the failure of the tax the negotiations finally failed in New York, and this summer I became satisfied we could not get money to build this year. The entire expense incurred by the company in connection with the attempt to get the tax in Louisiana was not large; certainly less than $250 in all. After it was apparent that the company would not get the money to build at present, and the matter was given up for this year. The citizens of Homer and Gibsland, Louisiana, some of whom happened to know that I had personally some money, offered to give me a bonus of $40,000 if I would build a road to connect the two towns, the distance being twenty miles. They would, no doubt, have made the company the same offer, as they wanted the road. I would have had the company build the
281 road if it had had the money, but it had not and could not get it. I found that with the $40,000 subsidy, what money I had and what I could borrow in St. Louis and Little Rock on my personal credit, I could probably build this 20 miles of road, and I undertook it about the latter part of July or early in August. Not one dollar belonging to the Arkansas and Louisiana has gone into this enterprise, and the allegation that I have charged my expenses in connection with it to the Arkansas and Louisiana Company has not a shadow of truth. The charge that I have used large sums of money belonging to the railway company in paying my attorneys' fees and for witnesses and in travelling expenses and costs accrued in and about my defense of the original bill is untrue. The company was made a party to the suit.
282 It was sought to take its property from it and put it into the hands of a receiver. It was compelled to be represented by attorney to take depositions and to incur some expense. The amount of its outlay in the case is about $150. I have paid out of my own funds about $350. Not a cent has been paid for attorneys' fees and the costs are not paid yet.

The allegation that I have used large sums of money in payment of telegraph despatches to New York and elsewhere upon business in no manner connected with the Arkansas and Louisiana railway and in which it had no interest is untrue. The fact is that the Western Union Telegraph Company has granted me a frank for the free sending of telegrams on business and furnishes me personal stamps for the free transmission of personal telegrams, and upon my application it has furnished franks to the officers of the Arkansas and Louisiana railway for the free transmission
283 of the business of the company.

The allegation that I have used of the money of the company $120 to pay interest on $1,200, borrowed from my wife and used ostensibly from Jan'y 1st, 1886, to Jan'y 1st, 1887, but in fact returned to her in March, 1886, is wilfully and maliciously false. I did borrow in December, 1885, from my wife, for the use of the road, $1,200, for which I agreed she should be paid interest. This money was received by my wife from her mother's estate. I used the money on the first day of January, 1886, to pay the company's

debt. When Paul F. Beardsley brought suit and made application for a receiver in March, 1886, the company owed me large sums of money and owed this money to my wife. I took no steps to protect myself, but not wishing to have my wife's money tied up so that at the end of the year she could not get it, as agreed, which would have happened if a receiver had been appointed, I
284 requested Mr. Carruth to take the money and account to my wife for the interest, but to keep it for the company to use and we would reimburse him. He did so, and the transfer on his books was to enable him to protect her. When Judge Caldwell denied the motion for a receiver I did not think it necessary to have any change made, as we had the money and we kept it and used it through the entire year. All these facts were well known to Paul F. Beardsley when he swore to this complaint. I explained them to him fully. Mr. Carruth repeated the explanation afterwards in my presence. In the hearing in the circuit court last month this matter was up and the sworn testimony and cross-examination of Mr. Carruth, treasurer; Mr. Wheless, auditor, and myself showed the facts as here set forth, & no attempt was made by com-
285 plainant to disprove or dispute them.

The allegation that I have used and am using the earnings of the Arkansas and Louisiana railway on hand and as fast as they accrue in constructing the road in Louisiana in which neither the Arkansas and Louisiana railway nor the complainant has any interest is untrue. Not a dollar of the earnings or funds of the Arkansas and Louisiana railway has gone into the Louisiana road. On the contrary, in the summer of 1887, I loaned the Arkansas and Louisiana railway about $5,000 worth of steel rails and track material, which I paid for with my own money and which it needed for its track, but could not pay for at the time. It is not true that I have taken valuable property of the Arkansas and Louisiana railway to Louisiana, &c., as asserted. The Arkansas and Louisiana railway had on hand a lot of old scrapers—three-wheel
286 scrapers—and an iron or track-laying car. These were bought in 1882 and were used in the construction of the Arkansas and Louisiana railway in that and the following year. They were of no value except for construction purposes, and the Arkansas and Louisiana railway had no use for them. I purchased these tools and allowed the company full value for them and more than they could have been sold for. I bought both scrapers and wheel scrapers of same make and fully as good in Louisiana afterwards for about half what I paid the Arkansas and Louisiana Company for those I got from them. The Arkansas and Louisiana Company has two old locomotives which were not in use, but which I have not been able to dispose of. One of these I rented at a fair monthly rental and took to Louisiana for use in construction. This
287 is an advantageous arrangement for the Arkansas and Louisiana railway. The engine will probably depreciate less in use than lying idle and the company gets a revenue. I wanted a second engine, but the other old engine of the Arkansas and Louisiana Company is so worn that I could not use it profitably. I ar-

ranged with the Vicksburg and Shreveport railway for another engine on more favorable terms than I get this one on. The declaration that I have devoted the greater part of my time since beginning of said suit, namely, since March, 1886, to my own business and to the construction of the road in Louisiana is untrue. I commenced the Louisiana road in July or early August of this year. Previous to that time I had no other business except the management of this road. Since I began the Louisiana road I have
288 been there a good deal, but I have been on the Arkansas and Louisiana railway, more or less, every week, and I do not think I have neglected any business of the road. It is true, also, that I have been paid my salary, but it is also true that the salary I charged the road since April last is just a little over one-third of what I was offered on another road. Paul F. Beardsley, the complainant, when an employee of this road was occasionally absent on his own business. On one occasion, at least, he was absent for more than a month on some business matters of his own. He had no hesitation about drawing his salary from the company from the time he was absent, and he did so draw it. The alleged discriminations occurred at Nashville, when the complainant, as an employee of the road, was then in charge of the business of the company.

289 The course pursued then was strongly urged by him and was carried out by him. He was directly in contact with the parties and was very arbitrary and aggressive, and it is my belief that much of the trouble complained of would never have occurred if he had not been sent there. Within a very short time after he left the alleged discriminations were discontinued and nothing of the kind has since occurred. I was desirous to make the change in the policy of the road earlier, believing the lower town could sustain itself without the assistance of the road, but was prevented by his remonstrances. The allegation that by my unwise and reckless conduct I have so embittered the merchants of Howard, Sevier, and Polk counties, from where the revenues of said railway have been and must of necessity be derived, that
290 they have refused to transport their merchandise and cotton over the road and have hauled and are still hauled the same in wagons is best answered by the facts. The complainant was at Nashville, the distributing point for these counties, acting as assistant superintendent of this road in the year 1884, 1885, and the early part of 1886. He was allowed almost entire control of the business of the road then. He was personally in contact with the business men and the merchants of these counties or such of them as came to Nashville to transact business. In the year 1885, which was the best year we had while he was there, we received from these counties from the first of the season, say September 1st up to November 7th, for shipment 3,290 bales of cotton. After he left, in the season of 1886, we received from the same counties up to November 7th for shipment 3,527 bales of cotton. For the
291 present season we have received from these counties at Nashville for shipment 4,300 bales of cotton to November 7th.

The gain in all our other business is about in the same ratio for these counties. Further comment seems unnecessary.

The complaint in regard to the construction and sale of a telephone line to Columbus is in character like the others. Columbus is a town distant 14 miles from Fulton, on the Iron Mountain railway; 17 miles from Hope, on the Iron Mountain railway, and 10 miles from Washington, on the Arkansas and Louisiana railway. It is a place of considerable business. It had no communication with any of these places except by mail-carrier on horseback over country roads. About half the business of Columbus went to Fulton and the balance was divided between this road and Hope. I believed that by constructing a telephone line from Colum-
292 bus to our depot at Washington we might turn a much larger portion of the business of the place over our road. I considered that the line would not sustain itself and I asked the citizens of Columbus to give one hundred dollars towards putting it up. They did so. It was put up, and with three telephones cost about $260 or $160, besides what the Columbus people gave. The result on the business was what I expected and we now get most of it. The expense of maintaining the *wire* was, as expected, greater than the receipts for its use. A gentleman living in Washington, named Holman, carries on a large plantation near Columbus, over which the line passed. The use of the line became indispensable to him and I sold it to him, binding him to maintain it, for $150, with telephones, being $10 less than cost. We save the loss of maintaining it, get all the results we could have by
293 retaining it, and we find we get about as much revenue from Columbus business on the balance of the telephone line as we did before it all. The payment of the line went, of course, to the company.

The complaint about employing an engineer and making survey hardly needs an answer. It was fully justified by the probability that a road was about to be built up behind us that would almost ruin this one. It was done in the interest of the property and cost less than $300. The complaint in regard to sales of land has no merit. The decree spoken of gives the lands to the Arkansas and Louisiana Railway Company and requires me to convey them to the company within 90 days, but the decree has been superceded. Nevertheless, I have observed the spirit of it in order that all interests may be fully protected, no matter what the final result
294 may be. With the consent and approval of the company I sell the lands, and every dollar that is received either from sales or rentals or in any way from it goes into the treasury of the company. If the decree is affirmed, the money is where it belongs; otherwise the company can account to the proper parties.

If any of this company's money has ever been used for obliging or for influencing legislation it has been done without my knowledge.

The charge that I have expended large sums of the company's moneys to advance the private interests of my political friends is utterly false.

To the allegation that I have expended large sums of the company's money in making presents to my friends, and that, amongst others, I presented Mr. W. H. Carruth, the treasurer, with a clock costing $38, I answer I have never made a present to any
295 friend of mine as a friend at the expense of the company. As a matter of policy I have considered it wise that the company should make small presents once a year, at Christmas, to those of its employees whose fidelity and trustworthiness were established. The motive is to foster a feeling of regard and interest between the company and its employees, on whose honesty and fidelity the success of the company's business depends. This I have caused the company to do for several years, but, excepting in the years 1884 and 1886, the whole amount so expended has not been over $25 in any one year. Mr. W. H. Carruth has been the president and treasurer of this road and the roads preceding it for more than ten years. He has done and had done in his office an immense amount of clerical work, which if done elsewhere would have cost in the aggregate thousands of dollars. In the beginning he gave about $1,750 in cash without any consideration to help get the road
296 running. When it was extended beyond Washington he gave without any consideration a right of way 100 feet wide through town lots and for about a mile through cultivated and valuable land in his farm in the vicinity of Washington. From the time the road was built in 1880 up to the time this clock was presented, Christmas, 1886, there never was a year that the road was not largely his debtor for borrowed money to carry it through the dull season. Year after year, when it was necessary and the earnings were always insufficient at that season, I was in the habit of making my individual notes in sums of $3,000 to $5,000, and Mr. Carruth endorsed them to enable me to borrow money, which was at once turned into the treasury of the road and used, we trusting to be reimbursed in the winter when the earnings were large, but when, if it had not been for the expenditure during the summer, we could not get
297 over the track. For all these years of service as president and treasurer, for all the clerical work, for the large donations in money, for the right of way, for the many loans of money, some of which had certainly come between the company and the sheriff, for the risk he incurred by the repeated use of his name on paper for large sums, Mr. Carruth had never asked or received from the company one single dollar, either as salary or compensation. When, therefore, at the Christmas of 1886, I caused the company to expend as much, perhaps, as $25 in Christmas reminders to its employees I did not feel that injustice was done it in causing a clock costing $38 to be presented to Mr. W. H. Carruth. All the facts here stated were well known to Mr. Paul Beardsley both during the time he was with this company as an employee and were
298 brought to his notice before filing his complaint. If he owns, as he claims, one-third of the property, to which he has never contributed a dollar, he is to that extent a beneficiary in the benefits derived from Mr. Carruth. At Christmas, 1884, I found Mr. Paul Beardsley, then an employee of the road at a salary of $100 per

month, which he drew regularly present or absent, was behind in his account $187. I caused the road to present him the amount and he seemed then to see no objections and thanked me for having it done.

The complaint about transportation of shingles and coke are correct. When lessee of the road I brought three or four cars of shingles to Washington and sold them, but when a business man brought shingles there to sell I discontinued it, and have not had any more since. I also freed shingles over the road for the complainant when he was in the employment of the company at
299 Nashville, and he kept them there for public sale, and when the company needed shingles he sold them to it at a profit. At his request I also freed a car of coke for him for sale at a profit to him, and since he left the road I have taken a car of coke to Nashville for same purpose. The salt was bought really in the interest of the road and not for any purpose of profit. It was delivered to merchants at Nashville at less than cost, with the understanding that they should make a further loss and sell the salt at $1.25 per barrel at Nashville, the object being to draw trade to the town, which was successful. The purchase of the steam shovel and plow was, in my opinion, judicious and necessary. Answering the allegation that I have compelled complainant to pay fare and freight over the road, I say: After he left the road and
300 brought suit against it, from February 15th, 1886, he was permitted to use the road for himself and family free. On the 1st of May, 1887, I think, the law known as the Smith law went into effect. I was advised by counsel then that the free use of the trains by any but railroad employees might and probably would be construed to — a violation of the law and might subject the company to prosecution and costs. I therefore issued an order prohibiting free use of the train by any persons. Other parties besides complainant, outside of railroad employees, were previously allowed free use of trains. The order was not intended to apply particularly to complainant, but was simply a compliance with what I was advised was the law. The complaint about refusal to connect with another telephone company at Nashville amounts to this: I would not agree that a foreign company should come into our territory, place an office in the same village to compete with us, and
301 then furnish them a wire to enable them to get our business.

Answering his complaint that he was not permitted to examine and overhaul the books and papers of the railway company, I have to say, when the decree of the circuit court in Paul F. Beardsley's favor was susperseded I was advised by counsel in the case that he had no further right to interfere with our books or our business pending the final decision. Nevertheless, he was allowed to examine the books and papers of the company for some months later. His manner and methods of examination were both offensive and troublesome to the officers of the company. The information he obtained from his access to the books and papers of the company was used to our injury. Our business was the talk of the streets.

Mr. Carruth, the treasurer of the company, became so disgusted with the annoyance and obstruction of these examinations in
302 his office, which is a private office, that he advised me that he would decline to keep any accounts for the company or have anything go into his books which would subject him to such annoyances. Mr. Carruth's services have been almost invaluable and the matter was such a nuisance that it was considered that it ought to be discontinued. The charge that the president, directors, and other officers are so completely under my influence and domination that they will obey without question my least command is utterly and absurdly false. All of these gentlemen are men of high standing and are honored and trusted in the community in which they reside. Some are lawyers, some merchants, one is a United States Senator, one collector of internal revenue for the United States, and I declare upon my oath that I believe that any attempt on my part to
303 induce them or any of them to do anything they regarded as dishonest or wrong would lose me at once their confidence and moral support. They have rendered me valuable assistance, both material and by advise, in my efforts to build up and sustain the road. I have sometimes differed with them on questions of policy and then have quite as often adopted their views as I have induced them to accept mine. In regard to the allowance and payment to me by the company of certain sums of money, the greater part of which had been owing to me for a long time, I have to say: In September, 1879, I made a contract with the Washington and Hope Railway Company to build a narrow-gauge railway from Hope to Washington. For the construction of this road the Washington and Hope railway contracted to give me the individual obligations of solvent parties aggregating $10,000, to give and
304 convey me the land granted by the State of Arkansas to the road, said then to be about 20,000 acres, and in addition to give me the stock of the road except sufficient to qualify the directors. My contract required only a 20-lb rail, and I had four years to complete the road. I began the work at once—that is, in September, 1879. In the following November I bargained with a Mr. Alderman, of Ohio, that in consideration of his furnishing or paying an amount of money equal to one-half the cost of the actual construction of the road I would transfer to him one-half the shares of stock when received. Mr. Alderman did not acquire any right whatever to any part of the lands or individual obligations in this bargain. I had spent the entire summer of 1879 previous to making the contract with the Washington and Hope railway in investigating the matter and endeavoring to arrange to build the road.
305 I lived in West Virginia. I had come to Arkansas three times, gone to New York three times, to Boston once, and to Baltimore twice, and of course had expended a good deal of money as well as time. This was known to Mr. Alderman at the time I bargained with him. No part of this expense was assumed by him, but the land and personal obligations were to be and remain my property. Mr. Alderman swears in his testimony in the case that

there was no partnership; that he was to have one-half the stock. The obligations were taken in the name of the Washington & Hope Railway Company, to be transferred to me when my contract was completed. The road was opened for traffic about September, 1880, or three years sooner than the limit allowed by the contract. It was accepted by the company, to date from January 1st, 1881. The road earned very little at first, and could hardly sustain
306 itself. The notes were in the hands of Mr. Carruth, president and treasurer of the road. They were not formally turned over to me when the road was completed, but at my request he held them for collection for me and subject to my control. I directed him to devote the proceeds as collected to the obligations of the company. The collections as made went into the treasury of the company by my directions and were used by the company. From the time the road was finished these notes were always under my control and held for me, and if I had not permitted the money would not have been used by the company. They were paid, went into the treasury of the company, and were used by it just as shown in the account allowed by the directory. I never got a dollar for these notes or the use of them. I had practical control of the funds of the company for years, and could have paid myself at any time when the money or part of it was on
307 hand, but could never have drawn the money without disaster to the company until this summer. I do not understand or believe that this account or any of the accounts making the $16,000 complained of were adjudicated by the court in the case of Paul F. Beardsley *v.* J. D. Beardsley and The Arkansas and Louisiana Railway. It was also true, as was known to the directors, that there was owing me $2,500 on my salary from the Washington and Hope railway and $600 from the Arkansas and Indian Territory railway. I did not draw this salary as it became due, because all the money in the treasury was required to pay creditors who would not wait. If I could have got the money when due I could easily have got 10 % interest instead of 6 % charged the company. This amount allowed me for salary was actually due. I rendered the services and had never been paid until I got it after it
308 was allowed by the directory. The lands which had been granted by the State of Arkansas to the Washington and Hope Railway Company, which they agreed to convey to me, were never conveyed to me, nor have I ever been compensated for them. By an oversight these lands were conveyed to the Arkansas and Indian Territory railway in the general sale to that company, and by that company conveyed to the Arkansas and Louisiana Railway Company in the sale to that company. The latter company sold them for a valuable consideration to the constructors of the road. The allegation that I had been ordered by the court to convey these particular lands with the other lands to the Arkansas and Louisiana Company is knowingly & willfully false, and is made to mislead the court. The complainant is thoroughly aware that all of these lands remaining unsold were sold and con-

veyed to Louis A. Gates, of Iowa, in the year 1884, about
309 two years before the commencement of said suit. He was fully cognizant of said sale when made and knew what disposition was made at the time of the money. The account for $172.50 for office desk and other material and money was actually due me as represented. The property and money therein stated belonged to me of my own private property and went into the treasury of the company as stated. About the time the litigation was pending with Paul F. Beardsley I was offered by one of the most prominent railroad men of America a position worth $6,000 per annum, and he strongly advised me to give up the management of the Arkansas and Louisiana railway and accept the position. After the decree it was agreed with the company to cancel the lease and surrender the road to the company. At that time I advised the president and auditor that I had been offered $6,000 per annum
310 and that I would not operate the Arkansas and Louisiana railway for the amount previously received. I told several of the directors the same. I requested the auditor not to enter up any salary until the matter should be brought before the directors. The auditor afterwards advised me that he preferred to continue to enter $200 per month in order that he could close his accounts each month, & he advises me that he did so, but both he and the president understood that I was not on that salary and that the matter was to be adjusted, and that when the salary was adjusted the difference was to be entered as an allowance. When the allowance — made it was intended to be for 8 months to make the salary equal to $6,000 per year; but by some oversight it is made in the account to be from Aug. 6 to Sept. 1; should have been from Ap. 1 to Ap. 1 or from Aug. 16 to April 16. The matter was not brought up again, and when I undertook to build
311 the Louisiana road, I thought, as my time would be divided, the salary should be also, and it is now at $200 per month, and I have made no claim for additional advances since April 1st and do not propose to do so. The charge that there is any collusion or conspiracy between the St. Louis, Iron Mountain and Southern railway and the Arkansas and Louisiana railway or with myself or between Mr. Jay Gould and myself is untrue & absurd. The Iron Mountain railway was paid $12,000 last year under the contract. No further payment is yet due. By the contract the Iron Mountain Railway Company was authorized to examine our books and to know what disposition has been made of the earnings of the company. It is a fact that the auditor of this company furnishes regularly every week to the auditor of the St. Louis, Iron Mountain and Southern Railway Company a statement
312 showing earnings of this road, and regularly every month a statement showing the money earned during the month and what has been done with it.

The declarations of complainant in regard to what he alleges I have said in regard to managing the road in such a way that he would have no benefit of the stock and bonds of the company if the decree is affirmed is absolutely false.

In the allegation in regard to lands he says he has learned since the rendition of said decree that the following-described lands were omitted, and about which your orator then had no information, namely, the southeast quarter of section thirty (30), in township nine (9) south, range twenty-six (26) west; the west half of the southeast quarter of the southwest quarter and the east half of the southwest quarter of section thirty (30), in township ten (10) south,
313 range 25 west, containing 30 acres, the same being the town site of the town of Ozan, on the line of the said railway, &c., &c., and that said defendant wrongfully concealed during the pendency of the original action aforesaid. This allegation is intentionally false in every respect. The complainant did not know all about these lands, particularly the Ozan lands. He has bargained and contracted to sell lots at Ozan while he was an employee of the road and before he brought the suit. He quoted prices of the lots frequently and referred the parties to me for terms of payment, and in several cases came to me to see what terms I would grant. I did not conceal any facts during the pendency of his suit.

It is true that I offered the claim for the notes and salary and some other items to the master appointed in the original suit, but he declined to consider the accounts at all, saying they were
314 outside the —. I find that since the 1st day of August, 1886, about the time of the rendition of the decree in the case, there has been expended about $24,000 in permanent improvements on the road. Between $7,500 and $10,000 worth of steel rail and track material have been put in the track. There are about 15 miles of old iron in the track that ought to be replaced as soon as possible with steel rail. I had arranged to take about $10,000 worth of steel from the Western Steel Company to go into the track this month, but, as the steel company would not ship the steel unless I became individually responsible, I decided to withdraw from the arrangement upon the application for a receiver made before the circuit court of Hempstead in last month.

After the dismissal of Paul F. Beardsly's suit in the State
315 court and before he instituted the present proceeding, desiring to remove any cause of complaint on his part, I wrote him a letter, of which copy is hereto attached, marked Exhibit "A." No reply was ever received.

J. D. BEARDSLEY.

Sworn to Nov. 10, 1887.

316 *Deposition of J. D. Vanderford.*

I am forty-seven years of age. I am at present auditor of the Ark. & La. R'y Co. I have been in that position over ten months, or since the 12th Dec., 1887. I was assistant to the auditor from the 26th May, 1887, until the 12th Dec., 1887. It is my duty as auditor to see that the agents' accounts are correctly kept, and to see that all accounts are properly kept.

Q. Produce the book of vouchers. Turn to voucher No. 891, dated Mar. 23, 1886, and say what it is.

A. I find this voucher dated Mar. 23*th*, 1886, to Baird & Caruth, for J. D. Beardsley's expenses to New York, $114.00.

Q. Turn to voucher 898, Mar. 30th, 1886. What is it?

A. It reads: To C. Bourne, for legal services, for making and taking affidavits, and so forth, in case P. F. Beardsley against J. D. Beardsley, $5,000.

Q. What is voucher No. 900, Mar. 31*th*, 1886?

A. In said voucher I find: Paid for Burt's affidavit, $1.00; Alderman's affidavit, $1.00.

317 Q. What is voucher No. 907, April 18th, 1886?

A. It reads: To Baird & Caruth, for expenses of J. D. Beardsley and attorneys to Little Rock April 1st, $27.00.

Q. What is voucher No. 1017, June 30th, 1886?

A. In said voucher I find two items: Expenses of J. M. Teeter to Washington, $7.50, and Major Bourne, taking depositions, $4.00.

Q. What is voucher No. 1030, July 9th, 1886?

A. I find in voucher No. 1030: To Mrs. Amos Walker, board as follows: J. M. Moore, $1.00; Calhoun, $10.50.

Q. What is voucher No. 1039, July 15th, 1886?

A. It reads: To Baird & Caruth, money advanced for traveling expenses to Little Rock June 24th, and for taking depositions in case P. F. Beardsley against J. D. Beardsley for J. D. Beardsley, $21.00; H. H. Wheelis, $10.00; to H. H. Wheelis to Little Rock and Nashville, $16.60; W. Caruth, two trips, $22.60, aggregating $70.20.

Q. What is voucher No. 1040, July 15th, 1886?

A. To Baird & Caruth, money advanced J. D. Beardsley for trip to New York in interest of extension of the road, $175.00.

Q. What is voucher No. 1045, July 20th, 1886?

A. It reads: To Baird & Caruth, money advanced J. D.
318 Beardsley, amounts as follows: Expenses to St. Louis and Little Rock, July 11th, $50.00; paid notary for taking depositions in case P. F. Beardsley against J. D. Beardsley, $10.00, aggregating $60.00.

Q. What is voucher 1053, July 31st, 1886?

A. I find in said voucher the following items: Evidence in case P. F. Beardsley against J. D. Beardsley, .75; Richardson's board, $1.75; R. S. Hayes' deposition, $5.00.

Q. What is voucher No. 1103, Sept. 13th, 1886?

A. It reads: To J. D. Beardsley's expenses of trip to N. Y., Sept. 6th, 1886, $100.00.

Q. What is voucher No. 1020, Sept. 30th, 1886?

A. Expenses of J. D. Beardsley to Little Rock, $6.00.

Q. What is voucher No. 1165, Nov. 27th, 1886?

A. It reads: To J. D. Beardsley's expenses to N. Y. and Phila. on R. R. business as per statement attached, $318.25.

Q. What is voucher 1174, Dec. 3rd, 1886?

A. That reads: To Baird & Caruth, money for J. D. Beardsley to L. R., $6.50.

Q. What is voucher No. 1192, Dec. 24th, 1886?

A. That reads: To J. D. Beardsley's expenses to N. Y., Nov. 28th, 1886, $185.50.

Q. What is voucher No. 1201, Dec. 24th, 1886?

A. It reads: To J. H. Arnold for depositions, $5.00.

319 Q. What is voucher No. 1247, Feb'y 7th, 1887?

A. This voucher reads: To V. Alderman, amount of cost in taking depositions in case P. F. Beardsley *vs.* J. D. Beardsley, $2.50.

Q. What is voucher No. 1268, Feb'y 22*th*, 1887?

A. Voucher No. 1268 reads: To J. D. Beardsley, expense to St. Louis and L. R., $50.00.

Q. What is voucher No. 1303, Mar. 22, 1887?

A. It reads: J. D. Beardsley's expenses to N. Y., $210.00.

Q. What is voucher No. 1304, Mar. 22, 1887?

A. It reads: To Baird & Caruth, balance of interest for the year 1886, $120.00.

Q. What is voucher No. 1300, Mar. 22nd?

A. It reads: To J. D. Beardsley, furniture sent to Nashville hotel as follows: One walnut bed-room set, marble top, $75.00; one walnut bed-room set, marble top, $95.00; one walnut bed-room set, $45.00; one hotel mirror, French plate glass, $40.00; two office chairs, $4.00; one walnut card table, $5.00; four hair-cloth chairs, $8.00; aggregating $277.00.

Q. What is voucher No. 1301, M'ch 21st, 1887?

A. It reads: To J. D. Beardsley, amount paid on accounts for R. R. matters: Amount paid Dr. Carrigan for Bomar, $2.75; amount paid Dr. Carrigan for Roots, $1.40; amount paid Calhoun for

320 expenses in La., $50.00; amount paid J. A. Richardson in La., $20.00; amount paid Richardson in La., $20.00; amount paid R. B. Samuels, $30.00; total, $134.15.

Q. Taking from said voucher the amounts paid Dr. Carrigan for Bomar and Roots, what is balance of said voucher?

A. $120.00.

Q. What is voucher No. 1325, Mar. 31st, 1887?

A. One item of said voucher handed Mr. Hammette for expenses for self and Capt. Boswell from Shreveport to Washington and return, $25.00.

Q. What is voucher No. 1328, April 5th, 1887?

A. It reads: To J. D. Beardsley, expenses to St. Louis, $35.00.

Q. What is voucher No. 1322½, Mar. 30th, 1887?

A. That reads: To J. D. Beardsley, one office desk brought from Cairo, $36.00; interest from Jan. 1st, 1881, to April 1st, 1887, $13.50; two sets lumber trucks sold to Weaver, $40.00; one set lumber trucks sold Womack, $20.00; one truck wheel sold Short, $5.00; one set lumber trucks sold to Short, $20.00; one lot of chains sold to Womack, $13.00; interest to April 3rd, 1887, $25.00; total, $172.50.

321 Q. What is voucher No. 1323½, Mar. 23d, 1887?

A. It reads: To J. D. Beardsley, for amount of notes paid to him by the Washington and Hope R'y Co. and collected and proceeds applied to the use of that and successive companies, with interest to April 1st, 1887, see list attached, $9,696.67.

Q. What is voucher No. 1324½, Mar. 27, 1887?

A. It reads: To J. D. Beardsley, balance due by the Washington and Hope R'y Co. on salary, as shown by the records in the suit now pending with P. F. Beardsley *vs.* J. D. Beardsley, $2,500.00; interest from Sept. 18th to April 1st, $680.00; three months' salary on construction of the Ark. & Indian T. R'y, $600; interest from Dec'r 1st, 1883, to April 1st, 1887, $117.00; total, $3,897.00.

Q. What is voucher No. 1325½, Mar. 30th, 1887?

A. It reads: To J. D. Beardsley, salary for services as general manager, and so forth, from Aug. 16th, 1886, to April 1st, 1887, $2,400.00.

Q. What is voucher No. 1378, Oct. 22*th*, 1887?

A. It reads: To J. D. Beardsley, amount paid for narrow-gauge engine, as follows: Oct. 10th, to cash paid for repairing en-

322 gine, $3.00; Oct. 15th, cash paid for engine, $5.90; Oct. 15th, cash paid for repairing engine, $4.65; total, $13.35.

Q. What is voucher No. 87, June 28th, 1887?

A. It reads: To J. D. Beardsley, amount due for expenses two trips to New York, $300.00; one trip to St. Louis, Mo., and Cinn., O., $75.00; total, $375.00.

Q. What is voucher No. 128, July 28th, 1887?

A. It reads: To J. D. Beardsley, amount due for expenses to N. Y. and return, July 23rd, 1887, $175.00.

Q. What is voucher No. 148?

A. It reads: Aug. 9th, to A. S. Aloe, St. Louis, amount of invoice, July 5th, 1887, one Prentice level No. 356, profile paper, steel chain, ½ doz. transit books, ½ doz. level books, and two pounds of keel, $133.20.

Q. What is voucher No. 323?

A. It reads: Nov. 12th, 1887, to Baird & Caruth, money used for expenses for J. D. Beardsley, W. H. Caruth, and H. H. Wheeles to Little Rock in suit P. F. Beardsley *vs.* J. D. Beardsley, $21.00.

Q. What is voucher No. 372?

A. That reads: Dec. 3rd, 1887, to J. D. Beardsley, amount of expenses to St. Louis, Mo., Nov. 8th, 1887, $25.00.

323 Q. State whether or not these vouchers about which you have been testifying represent the amounts paid by the A. & L. R'y Co.

A. They do; in fact, I know that they were paid by the A. & L. R'y Co.

Q. Are these vouchers receipts for the amount of money specified in the vouchers and which were paid by the A. & L. R'y Co. and charged upon the books of said company?

A. They are.

Q. Do you find upon the books of the A. & L. R'y Co. an account against the La. North & South R'y Co.? If so, state the items of said account and their dates.

A. In the month of August, 1887, I find charged in the La. North & South R'y Co. one rail-laying car, shipped to Gibsland, La., $40.00; in the same month and the same year, two scrapers at $3.00 each, shipped to Gibsland, La.—total, $6.00; same month and same year, three wheel scrapers at $16.00—total, $48.00; on Oct., 1887, I find

charged to the La. North & South R'y Co. amount collected from Lewis and Bomar advanced them to go to La., voucher 1371, old
324 account, $28.00; same month and same year, to J. D. Cornish, Nashville, and charged to La. North & South R'y Co., Sept. 28th, 1887, four stay pieces for iron cars, see voucher 1372, old account, $1.83; same month and year, La. North and South R'y Co. paid E. H. Linnly, see voucher 1376, old account, $205.05; same month and year, La. North and South R'y Co. paid, by J. D. Beardsley, see voucher 1379, old account, $0.90; same month and year, for amount paid by T. Y. Williams, agent, see voucher 1380, old account, $8.11; same month and year, paid E. H. Hazzleman, see voucher 1383, old account, $4.00; same month and year, paid T. Y. Williams, ag't, see voucher 1384, old account, 27.00; Nov., 1887, La. North and South R'y Co. for rental of engine, old No. one, from Sept. 15th to Nov. 15th, $150.00; Dec., 1887, charged to the La. North and South R'y Co. rental of engine, old No. one, from Nov. 15th to Dec. 8th, $56.25; same month and year, rental of engine, old No. one, from Dec. 8th, 1887, to Jan. 8th, 1888, $75.00; same month and same year, interest at 6 %, same as shown by bill rend. to Jan. 1st, 1888, $18.86.

325 Q. Who kept the books, including the voucher book, from which you have been testifying, up to the 12th Dec., 1887?

A. Previous to my coming here, May 26th, H. H. Wheelis; after that both of us, he sometimes making and copying the vouchers himself and I, as his assistant, entering them on the voucher register myself.

Q. Who was the general manager of the road in 1887?

A. J. D. Beardsley was the gen. manager, but H. H. Wheelis acted as gen. boss.

Q. What position did Wheeless occupy?

A. He was the auditor of the road.

Q. Please refer to the books and see if you can find the freight charged on a safe.

A. I do not think I can. If it was charged it was charged through agent's voucher.

Q. Do you find anything upon the books or have you examined the books showing what the narrow-gauge engine was sold for?

A. I do not know if there is any credit on the books, but I
326 know it was sold or contracted to be sold for $1,700.00.

Q. From whom did you obtain this information?

A. From H. H. Wheless; he told me so.

Q. When was this narrow-gauge engine sold?

A. Some time in the summer of 1887; I do not remember the day of the month.

Q. What do you know about such narrow-gauge engine?

A. I know they had a narrow-gauge engine, known as Little Dinky.

Q. Refer again to the account of the La. North and South R'y Co. and tell me how much per day the engine, old No. one, was rented for.

A. It was rented at $75.00 per month.

Q. State whether or not that was a fair rental for the engine.

A. As to general rental of engines by other roads, I don't think it was.

Q. Was that the full rental value of that engine?

A. I should think this engine was worth at least $5.00 to 7.00 per day.

Q. State whether or not the receiver of the A. & L. R'y Co.
327 is now renting one of the engines of the said Co. to any other road; and, if so, to what road and for what rent.

A. The receiver is now renting one of the engines of the road to the Iron M. R'y Co. at a rental of $10.00 per day.

Q. When was this engine rented to the Iron Mountain and for what length of time?

A. The 18th of Aug. last; no time was specified for when renting it, but they were to keep it as long as they wanted to and pay 10.00 per day until it was returned.

Q. Can you tell me from the books of the A. & L. R'y Co. when the scrapers were bought and what they cost?

A. I cannot find the invoice.

Q. Do you know in what condition those scrapers were when they were taken?

A. I do not know.

Q. Do you know whether or not they had been lately repaired?

A. I think so; I only know from the pay-rolls, paying for repairing scrapers. Such charges were made and paid through the
328 pay-rolls of the A. & L. R'y Co.

Q. Do you know the condition and value of the rail-laying car which appears upon the books of the A. & L. R'y Co.?

A. No, sir; I do not.

Q. Do you know what it cost the company?

A. The invoice shows $85.00.

Cross-examination:

—. I do not know from personal knowledge, any further than the vouchers themselves show, the purposes for which the various sums of money mentioned in the several vouchers describes in my testimony-in-chief were expended.

Q. Do you know when the large safe mentioned in your testimony-in-chief was brought to Washington?

A. I think it was in the latter part of the summer or first of the fall of 1887.

Q. Do you know when it was taken away?

A. Yes, sir; it was taken away between the 6th and the 8th of Dec.

329 Q. Did the company have the use of that safe while it was here?

A. The company's books were kept in the safe; none of the company's money was kept in it, and nothing else except the books, as far as I know.

Q. Who did that safe belong to?

A. It was supposed to belong to the A. — L. R'y Co.

Q. Did you ever hear any one say that it belonged to the A. & L. R'y Co.?

A. I do not know that I did.

Q. Did you ever see any invoice of it showing that it belonged to the A. & L. R'y Co.?

A. I was told by the man that sold the safe that the old safe belonging to the A. & L. R'y Co. was taken in part payment for this safe, and this is why I believed this safe belonged to the A. & L. R'y Co.

Q. Do you remember the name of the man who told you that?

A. The man who told me this was named Baker; he was the traveling salesman for Star & Co., St. Louis, from whom the safe was bought.

Q. Who did Mr. Baker tell you bought that safe?

330 A. I think J. D. Beardsley, gen. manager of the road.

Q. What was a reasonable rental value of the safe while it was here?

A. I do not know that there was any rental value, as there was no special use for it. The old safe was as good for what it was used for. I do not know that the old safe mentioned before was ever delivered to Star & Co., but Baker told me I could sell it for $125.00 and send him $100.00; that he would order it to St. Louis when he returned. He told me this when he first came down here, the first time I saw him. I think this was the trip before he died. It was some time during Nov. or Dec., 1887. The old safe is still here in the office of the company. As far as I know, the A. & L. R'y Co. owns the old safe. I know that the A. & L. R'y Co. has not paid anybody anything for the old safe since the purchase of the large safe. I do not know anything about how the A. &

331 L. R'y Co. acquired the title of the old safe since the purchase of the large safe. I have been connected with R. R. business for twenty-six years in various capacities. I have worked in the chief office of other R. R. before I worked for this one. I think that I know what the general rental value of an engine is. I think the rental of an engine similar to the one rented by the A. & L. R'y Co. to the Mo. Pc. should be about $8.00 or $10.00 per day. I know that the old engine, No. one, was put in thorough repair immediately before it was rented to the La. North & South R'y Co. I know this by paying the bills through the pay-rolls for repairing the engine. I have no idea what the scrapers mentioned in my testimony cost, nor do I know when they were bought. I do not know the value of the scrapers at the time they were sold to the La. North and South R'y Co. The engine which the receiver is renting to the Mo. Pc. is one of the new engines which was purchased by the A. & L. R'y Co. in 1886 and is known as No.

332 one. I do not know what size the engine is; it is an eight-wheel engine. The rail-laying car was bought by the A. & L. R'y Co. the 12th of May, 1883.

Re-examined:

Q. Was there any place prepared in the building of the A. & L. R'y Co. to put the large safe bought by J. D. Beardsley?

A. There was.

Q. By whom was this place prepared and at whose expense?

A. The space, or opening, rather, was made by Willis Moore, who was in the employ of the company, and two other men with him.

Q. At whose expense was the safe unloaded from the cars and put in the place prepared for it?

A. It was done by the expense of the company and paid for through their weekly pay-rolls.

Q. How long did it take to prepare this place and put the safe in it?

A. Willis and his men and Carriway and his men worked from about (8) eight o'clock in the morning till five in the afternoon.

333 Q. How many men did Willis and Carraway have employed?

A. Willis had two and Carraway had eight, I think.

Q. How much were these men getting paid by the company per day?

A. Willis Moore was getting $2.00, Carraway $1.75, and the others $1.00 each.

Q. When were vouchers No. 1322½, 1323½, 1324½, 1325½, of date Mar. 30th, 1887, entered upon the books of the company?

A. I find voucher 1322½ copied in the old book after voucher 1353, dated June 9th, 1887; then I find 1323½, 1324½, and 1325½ following immediately after 1322½.

Q. Get the book in which these vouchers were entered; what date and entry?

A. This is the cash book used by the treasurer of the company, W. H. Caruth. The entries read on page 208 as follows: July 2nd, 1887, cash paid J. D. Beardsley, voucher 1322½, $172.50; also July 2nd, cash paid J. D. Beardsley, voucher No. 1325½, $240.00;

334 same month and year, cash paid J. D. Beardsley, voucher No. 1324½, $3,899.00; same date, cash paid J. D. Beardsley, voucher 1323½, $9,696.67.

Q. Examine the journal of the A. & L. R'y Company and state the account of J. H. Bell.

A. I find in the journal, dated Oct. 8th, 1885, at page 107, an entry to J. H. Bell, to bills rec., donation note of H. Lazarus, $125.00; note of H. Wright, $125.00; interest on Lazarus' note, $49.63; Wright's note, $26.15, amounting in all to $325.78; also note, another entry on same page, to J. H. Bell, to bills rec., note to H. Lazarus, due June 7th, 1885, $162.11; note to H. Lazarus, due Feb'y 7th, 1885, $162.11; also a notation reading as follows: Above entrys covering an agreement whereby J. D. Beardsley was to pay H. Lazarus $800.00 on account of J. H. Bell for money due Bell for purchase of land and the payments of $150.00 in cash and donation notes as above, $325.78, and J. D. Beardsley's note for balance, $324.22, makes up the $800 payment to Lazarus.

Q. Get voucher No. 748, dated Jan. 9th, 1886. What does it read?

335 A. It reads: Balance on note dated Oct. 7th, 1885, due Jan. 7th, as per memorandum below, $143.57. "Memorandum.—Note, $162.11; interest to Nov. 3rd, $2.12; payment, $22.50, leaving a balance of $141.73; interest to Jan'y 9th, $1.87; due, $143.57. This voucher is to H. Lazarus."

Q. Get voucher No. 818, dated Jan. 13th, 1886. What does it read?

A. Voucher reads: To H. Lazarus, for amount of note due Feb. 7th, 1886, $162.11; interest, $5.40; total, $167.51, less amount paid agent at Washington for freight on car of goods, per voucher 819, $30.00, leaving a balance of $137.51.

Q. Now state whether or not the entries on the books of the A. & L. R'y Co. show payment by said company to J. H. Bell for lands purchased by him and the amount of said payments.

A. Yes, sir; they do; $300.00 seems to be the amount.

Q. Examine treasurer's books of the A. & L. R'y Co. dated July 20th, 1883, and state what amounts, if any, were paid James R. May and J. S. Conway for lands.

A. I find on page 132 of the treasurer's cash book the fol-

336 lowing entry: Cash paid James R. May for land, $200.00; another entry: Cash paid J. S. Conway, $100.00.

Q. Examine the proper book of the A. & L. R'y Co. and see whether J. D. Beardsley drew his salary of $200.00 per month regularly from Dec., 1883, up to and including Nov., 1887, or whether the books show that he did so.

A. Yes, sir; I find in the treasurer's cash book entries covering the salaries for each month from Dec., 1883, up to and including Nov., 1887.

Q. Did the A. & L. R'y Co. buy or sell any salt between Sept. 1st, 1886, and Nov., 1887?

A. I know nothing about it before I came here in May, 1887.

Q. Examine the books of the company for those dates and see if they show anything of the kind.

A. I find no salt account kept by the A. & L. R'y Co. upon its books between the dates mentioned.

Q. Was there any salt account ever kept on the books?

A. I find on re-examining the books that there was.

337 Q. When did it commence and when did it end?

A. The ledger shows on page 380, first entry, Jan. 1st, 1885, and the last entry on the same page, June 30th, 1886; this is the only account of salt on the A. & L. R'y Co.'s books, as far as the books show.

Q. Examine the cash book of the A. & L. R'y Co. and see whether any money was paid April 2nd, 1886, to Sue C. Beardsley.

A. I find in the treasurer's book on page 244 the following entries: April 2nd, 1886, cash, Sue C. Beardsley, voucher No. 843, $1,200.00.

Q. In regard to the narrow-gauge engine about which you have testified, state whether or not it was put in repair before being sent off.

A. It was, sir.

Q. By whom was it repaired and at whose expense?

A. The repairing was done at the A. & L. R'y Co.'s shops and at their expense, I presume, at Nashville.

Q. State whether or not the workmen who made the repairs were in the regular employ of the A. & L. R'y Co.

338 A. They were, as far as I know.

Q. What are your means of knowing about this?

A. I made the pay-rolls through which these men were paid weekly.

Q. By whom were they paid?

A. By the A. & L. R'y Co.

Q. You said in answer to a former question that Mr. H. H. Wheless had told you that this narrow-*guage* engine had been sold for $1,700.00. What relation did Mr. Wheelis bear to the A. & L. R'y Co. at the time of telling you this?

A. He was the auditor of the road.

Q. Is there any credit to the A. & L. R'y Co. upon its books for this or any other amount as to the sale of said engine?

A. None that I know of.

Q. Have you ever examined to see whether there was?

A. I have not, sir.

Q. Have you not kept the company's books since the time of said sale and for some time before that?

A. I have.

Q. Please examine your books and see if there is an entry

339 upon them about this engine and the sale of it.

A. I find no entry upon the books as to the sale of the engine or the payment for it, after carefully examining the books from the time the engine was sold until the time the rece-ver took charge of the railway.

Q. Will you please prepare and file with this deposition a copy of each of the vouchers about which you have been testifying and make them a part of this deposition?

A. I will.

Q. Please examine voucher No. 262, of date Oct. 15, 1887, and voucher No. 266, of date Oct. 17, 1887, and state what they are.

A. Voucher No. 262 reads: To J. D. Beardsley, Dr., to amount due for steel rails sold to Arkansas & Louisiana R'y in Sept., 1887, and put down in track north of Ozan, Ark., as follows: 103 tons and 2,120 pounds, at $38.00 per ton, delivered f. o. b. *on board* cars at St. Louis, Mo., $3,949.96.

Voucher No. 26 reads: To J. D. Beardsley, Dr., for amount due for splices and bolts furnished by him as follows, f. o. b. cars, St. Louis, Mo.:

340

Sept. 7th.	1,200 splices, 19,800 at 2.15	425 70	
" 7th.	10 kegs 3½ x ¾ bolts, 2,000 at 3.10	62 00	
			487 70
" 30th.	1,200 splices, 20,200 at 2.15	434 30	
" 30th.	10 kegs 3½ x ¾ bolts, 2,000 at 3.10	62 00	
			496 30
	Total		984 00

Q. Are you familiar with the handwriting and signature of J. D. Beardsley?

A. Yes, sir.

Q. Are those two vouchers receipted by any one?

A. Yes, sir.

Q. By whom and on what dates?

A. Voucher No. 262 is receipted by J. D. Beardsley, Oct. 15th, 1887, and voucher No. 266 is also receipted by J. D. Beardsley, Oct. 17th, 1887, as being in full payment of the amounts specified in said vouchers. I know the handwriting to be that of J. D. Beardsley.

Q. State all you know from personal knowledge about these two vouchers.

A. Mr. Wheless, the auditor, dictated to me the form for drawing these vouchers. I drew them as dictated by him and took impressions of them in the voucher book and handed them to Mr. Wheless. I now find them in their regular place among the vouchers of the railway Co.

341 Q. Will you please prepare and file with this deposition, as a part of it, copies of said vouchers Nos. 262 and 266 and also of vouchers No. 950, 1199, and one with no number, dated Jan. 31st, 1887, for $89.07, and also of new vouchers No. 232, 305½, and 338?

A. I will.

Q. What portion of the time between May 26th, 1887, when you were employed by the A. & L. R'y Co., and Dec. 8th, 1887, when the receiver took charge, was J. D. Beardsley personally present and giving his attention to the management of said road?

A. I think he was in Louisiana when I came here. He was here about two or three times a month, remaining from one to two days at a time.

(Signed) J. D. VANDERFORD.

342

Copy.

Accounts Payable.

Voucher 891.

WASHINGTON, ARK., *March* 23, 1886.

Arkansas & Louisiana Railway Co. to Baird & Caruth, Dr.

Address, Washington.

For J. D. Beardsley's expenses to New York..... .... $114 00

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, M'ch 23, 1886, of the Arkansas & Louisiana Railway Company one hundred & fourteen $\frac{00}{}$ dollars in full of the above account.

J. D. BEARDSLEY.

No. 891. Arks. & La. R'y Co.

Copy.

Accounts Payable.

Voucher 898.

WASHINGTON, ARK., *M'ch* 30, 1886.

Arkansas & Louisiana Railway Co. to C. Bourne, Dr.

Address, Washington.

For legal services in making & taking affidavits, &c., in case P. F. Beardsley against J. D. Beardsley..... 5 00

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, —— —, 188–, of the Arkansas & Louisiana Railway Company — dollars in full of above account.

—— ——.

No. 898. Arks. & La. R'y Co.

[Written across the face:] Receipt attached.

343 *Accounts Payable.*

Voucher 900.

WASHINGTON, ARK., *March* —, 1886.

Arkansas & Louisiana Railway Co. to C. H. Buck, agent, Dr.

Address, ——.

For—

* * * * * * *
* * * * * * *
* * * * * * *

1886.
3, 22. Burt's affidavit, 1.00; 24th, Alderman's affidavit, 1.00.. 2 00

* * * * * * *
* * * * * * *
* * * * * * *

N. B.—The * * * represent items of amounts paid upon cr.'s ac. & were not called in question.

J. D. V., *Auditor.*

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

—— ——,
Superintendent.

Received, M'ch 31, 1886, of the Arkansas & Louisiana Railway Company two hundred & fifteen $\frac{65}{100}$ dollars in full of the above account.

C. H. BUCK.

Copy.

Accounts Payable.

Voucher 907.

WASHINGTON, ARK., *April 8th*, 1888.

Arkansas & Louisiana Railway Co. to Baird & Caruth, Dr.

Address, Washington.

For expenses of J. D. Beardsley and attorneys at Little Rock April 1st 27 00

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

—— ——,
Superintendent.

Received, April 8th, 1886, of the Arkansas & Louisiana Railway Company twenty-seven dollars in full of above account.

—— ——.

344

Copy.

Accounts Payable.

Voucher 1017.

WASHINGTON, ARK., *June 30th*, 1886.

Arkansas & Louisiana Railway Co. to T. Y. Williams, Dr.

Address, Washington.

For—

* * * * * * *

* * * * * * *

* * * * * * *

Expenses J. W. Teter to Washington	7 50
" to deputy sheriff in Bourn cases	2 00
" to Maj. Bourn, taking depositions	4 00
	13 50

* * * * * * *

* * * * * * *

N. B.—The * * * represent items of amounts paid upon Co.'s ac. & wer- not called in question.

J. D. V., *Auditor.*

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, July 2nd, 1886, of the Arkansas & Louisiana Railway Company — dollars in full of the above account.

—— ——.

Copy.

Accounts Payable.

Voucher 1030.

WASHINGTON, ARK., *July 9th*, 1886.

Arkansas & Louisiana Railway Co. to Mrs. Amos Walker, Dr.

Address, Washington.

For boards, as follows:

J. Moore	1 00
Calhoun	10 50
Engineers, conductors, & firemen	1 75
	$13 25

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, July 10, 1886, of the Arkansas & Louisiana Railway Company thirteen & $\frac{25}{100}$ dollars in full of above account.

ANNA WALKER.

345 Copy.

Accounts Payable.

Voucher 1039.

WASHINGTON, ARK., *July 15th*, 1886.

Arkansas & Louisiana Railway Co. to Baird & Caruth, Dr.

Address, Washington, Ark.

For money advanced for traveling expenses to Little Rock June 24th for taking deposition in case P. F. *v.* J. D. Beardsley:

J. D. Beardsley from B. & C.	21 00	
" H. H. W. in L. Rock	10 00	
		31 00
H. H. Wheliss to Little Rock, 15.35, & Nashville, 6.25.		16 60
W. H. Caruth, 2 trips		22 60
		70 20

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, July 15th, 1886, of the Arkansas & Louisiana Railway Company seventy & $\frac{20}{100}$ dollars in full of the above account.

BAIRD & CARUTH.

Copy.

Accounts Payable.

Voucher 1040.

WASHINGTON, ARK., *July* 15, 1886.

Arkansas & Louisiana Railway Co. to Baird & Caruth, Dr.

Address, Washington.

For money advanced J. D. Beardsley for trip to New York in interest of extension of the road $175 00

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, July 15, 1886, of the Arkansas & Louisiana Railway Company one hundred & seventy-five dollars in full of above account.

BAIRD & CARUTH.

346 Copy.

Accounts Payable.

Voucher 1045.

WASHINGTON, ARK., —— —, 188–.

Arkansas & Louisiana Railway Co. to Baird & Caruth, Dr.

Address, Washington, Ark.

For money advanced J. D. Beardsley and used as follows:

Expenses to St. Louis & Little Rock 7, 11, '86.....	50 00
Paid notaries for taking depositions in case P. F. *v.* J. D. B.....	10 00

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, July 20, 1886, of the Arkansas & Louisiana Railway Company sixty dollars in full of the above account.

BAIRD & CARUTH.

Accounts Payable.

Voucher 1053.

WASHINGTON, ARK., *July* 31, 1886.

Arkansas & Louisiana Railway Co. to T. Y. Williams, ag't, Dr.

Address, Washington.

For—

*	*	*	*	*	*	*	
*	*	*	*	*	*	*	

Affidavits case P. F. & J. D. B.....	75
Mr. Richardson's board.....	1 75
R. S. Hayes, ex. depositions.....	5 00
	7 50

N. B.—The * * * represent items of amounts paid upon Co.'s ac. & wer- not called in question.

J. D. V., *Auditor.*

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, July 31, 1886, of the Arkansas & Louisiana Railway Company — dollars in full of above account.

T. Y. WILLIAMS, *Agent.*

347 Copy.

Accounts Payable.

Voucher 1103.

WASHINGTON, ARK., *Sept.* 13, 1886.

Arkansas & Louisiana Railway Co. to J. D. Beardsley, Dr.

Address, Washington, Ark.

For expenses trip to New York, September, 1886..... $100 00

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, —— —, 1888, of the Arkansas & Louisiana Railway Company one hundred dollars in full of the above account.

J. D. BEARDSLEY.

Accounts Payable.

Voucher 1120.

WASHINGTON, ARK., 7, 20, 1886.

Arkansas & Louisiana Railway Co. to T. Y. Williams, agent, Dr.

Address, Washington.

For—

* * * * * * *
* * * * * * *
* * * * * * *

J. D. Beardsley's expenses to Little Rock..... 6 00

* * * * * * *

N. B.—The * * * represent items of amounts paid upon Co.'s ac. & wer- not called in question.

J. D. V., *Auditor.*

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, Sept. 30th, 1886, of the Arkansas & Louisiana Railway Company — dollars in full of above account.

T. Y. WILLIAMS, *Ag't.*

348 Copy.

W. H. Caruth, president. J. D. Beardsley, superintendent.

Superintendent's office, Arkansas and Louisiana Railway Company.

WASHINGTON, ARK., —— —, 188–.

Going to St. Louis:

Sleeper, porter, & meals		5 50
Expenses in St. Louis		38 00
Fare to New York		22 00
Sleeper & porter		6 50
Meals		4 00
		76 00

Return:

Fare from N. York	22 75	
Sleeper & porter	6 50	
Meals	4 00	
		33 25
In St. Louis	4 00	
Sleeper & porter & meals	5 50	
Little Rock	3 50	
		13 00
Fare to Philadelphia & return		6 00
Expenses in New York & Phila., including telegraph, car fare, &c.		190 00
		318 25

(Over.)

Cash from Caruth	250 00
Cash sent treasury dep't	327 11
Draft on Wheless	225 00
Cash, Geo. Taylor	25 00
	827 11
Expenses	318 25
	508 86

349 Copy.

Accounts Payable.

Voucher 1165.

WASHINGTON, ARK., *Nov.* 27, 1886.

Arkansas & Louisiana Railway Co. to J. D. Beardsley, Dr.

Address, Washington.

For expenses to New York & Philadelphia on R. R'd business, as per statement attached..... $318 25

Construction.

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, Nov. 27, 1886, of the Arkansas & Louisiana Railway Company three hund. & eighteen $\frac{25}{100}$ dollars in full of the above account.

J. D. BEARDSLEY.

Copy.

Accounts Payable.

Voucher 1174.

WASHINGTON, ARK., *Dec.* 3, 1886.

Arkansas & Louisiana Railway Co. to Baird & Caruth, Dr.

Address, Washington.

For money for J. D. Beardsley's expenses to Little Rock..... 6 50

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, Dec. 3rd, 1886, of the Arkansas & Louisiana Railway Company six & $\frac{50}{100}$ dollars in full of above account.

BAIRD & CARUTH,
By AGEN.

350 Copy.

Accounts Payable.

Voucher 1192.

WASHINGTON, ARK., *Dec.* 24, 1886.

Arkansas & Louisiana Railway Co. to J. D. Beardsley, Dr.

Address, Washington.

For expenses of trip to New York Nov. 28, '86..... 185 50

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, Dec. 24, 1886, of the Arkansas & Louisiana Railway Company one hundred & eighty-five & $\frac{50}{100}$ dollars in full of the above account.

J. D. BEARDSLEY.

Copy.

Accounts Payable.

Voucher 1201.

WASHINGTON, ARK., —— —, 188-.

Arkansas & Louisiana Railway Co. to T. Y. Williams, ag't, Dr.

Address, Washington.

For—

* * * * * * *
* * * * * * *
* * * * * * *
* * * * * * *

J. D. B. papers, 15c.; J. H. Arnold's deposition, 5.00.. 5 15

N. B.—The * * * represent items of amounts paid upon Co.'s ac & wer- not called in question.

J. D. V., *Auditor.*

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, Dec. 31st, 1886, of the Arkansas & Louisiana Railway Company — dollars in full of above account.

T. Y. WILLIAMS, *Ag't.*

351 Copy.

Accounts Payable.

Voucher 1247.

WASHINGTON, ARK., *Feb'y* 7, 1887.

Arkansas & Louisiana Railway Co. to V. Alderman, Dr.

Address, Burning Springs, W. Va.

For amount costs in depositions, P. F. B. W., J. D. B., & the A. & L. R'y Co..... 2 50

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, Feb'y 7, 1887, of the Arkansas & Louisiana Railway Company two $\frac{50}{100}$ dollars in full of the above account.

V. ALDERMAN.

A. M. ALDERMAN, *Witness.*

Copy.

Accounts Payable.

Voucher 1268.

WASHINGTON, ARK., *Feb'y* 22, 1887.

Arkansas & Louisiana Railway Co. to J. D. Beardsley, Dr.

Address, Washington.

For expenses to Little Rock & St. Louis..... 50 00

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, Feb'y 22, 1887, of the Arkansas & Louisiana Railway Company fifty dollars in full of above account.

J. D. BEARDSLEY.

352 Copy.

Accounts Payable.

Voucher 1303.

WASHINGTON, ARK., *March* 22, 1887.

Arkansas & Louisiana Railway Co. to J. D. Beardsley, Dr.

Address, Washington, Ark.

For expenses of trip to New York..... $210 00

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, M'ch 22, 1887, of the Arkansas & Louisiana Railway Company two hundred & ten dollars in full of the above account.

J. D. BEARDSLEY.

Copy.

Accounts Payable.

Voucher 1304.

WASHINGTON, ARK., *March* 22, 1887.

Arkansas & Louisiana Railway Company to Baird & Caruth, Dr.

Address, Washington, Ark.

For balance of interest for the year 1886 ..... 120 00

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, M'ch, 1887, of the Arkansas & Louisiana Railway Company one hundred & twenty dollars in full of above account.

BAIRD & CARUTH.

353

Copy.

Accounts Payable.

Voucher 1300.

WASHINGTON, ARK., *Mar.* 22, 1887.

Arkansas & Louisiana Railway Co. to J. D. Beardsley, Dr.

Address, Washington.

For furniture sent by him to Nashville hotel, as follows:

1 set walnut bed-room fur., marble top	75 00
1 " " " " "	95 00
1 walnut sideboard, " "	45 00
1 large mantle mirror, French plate-glass	40 00
2 office chairs	4 00
1 walnut card table	5 00
1 center table	5 00
4 hair-cloth chairs	8 00
	277 00

Examined and approved. H. H. WHELESS, *Auditor.*
Approved. J. D. BEARDSLEY,
Superintendent.

Received, M'ch 22, 1887, of the Arkansas & Louisiana Railway Company two hundred & seventy-seven dollars in full of the above account. J. D. BEARDSLEY.

Copy.

Accounts Payable.

Voucher 1301.

WASHINGTON, ARK., —— —, 188–.

Arkansas & Louisiana Railway Company to J. D. Beardsley, Dr.

Address, Washington.

For amount paid by J. D. Beardsley on account of railroad matters:

Am't paid Dr. Carrigan for Bomar	12 75
" " " " Roots	1 40
" " Calhoun for expenses in Louisiana	50 00
" " Jno. A. Richardson " "	20 00
" " " " " "	20 00
" " R. B. Samuels	30 00
	134 15

Examined and approved. H. H. WHELESS, *Auditor.*
Approved. J. D. BEARDSLEY,
Superintendent.

Received, M'ch 22, 1887, of the Arkansas & Louisiana Railway Company one hundred & thirty-four $\frac{15}{100}$ dollars in full of above account. J. D. BEARDSLEY.

354

Copy.

Accounts Payable.

Voucher 1325.

WASHINGTON, ARK., *March* 31, 1887.

Arkansas & Louisiana Railway Co. to T. Y. Williams, agent, Dr.

Address, Washington.

For amount handed Mr. Hammett for expenses of self & Capt. Dozwell, Shreveport to Washington and return.... 25 00

Amount paid for work on combination car:

Paid Perkins.....	25 00	
Less brushes & paints sold him...	3 10	
	21 90	
Cleaning & repairing seats...	1 00	
Paint & turpentine...	3 50	
		26 40
		51 40

Examined and approved.

H. H. WHELESS, *Auditor.*

Received, M'ch 31, 1887, of the Arkansas & Louisiana Railway Company fifty-one $\frac{40}{100}$ dollars in full of the above account.

T. Y. WILLIAMS, *Agent.*

Copy.

Accounts Payable.

Voucher 1328, old ac.

WASHINGTON, ARK., *April* 5, 1887.

Arkansas & Louisiana Railway Company to J. D. Beardsley, Dr.

Address, Washington.

For expense of trip to St. Louis. 35 00

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, April 5th, 1887, of the Arkansas & Louisiana Railway Company thirty-five dollars in full of above account.

J. D. BEARDSLEY.

355

Copy.

Accounts Payable.

Voucher 1322½.

WASHINGTON, ARK., *March 30th*, 1887.

Arkansas & Louisiana Railway Co. to J. D. Beardsley, Dr.

Address, Washington.

For 1 office desk bro't from Cairo	36 00
interest, J'y 1st, 1881, to April 11th, 1887	13 50
2 sets lumber trucks, sold Weaver	40 00
1 " " " " Short	20 00
1 " " " " Womack	20 00
1 truck wheels, " Short	5 00
1 lot chairs, " Womack	13 00
interest to April 1st, 1887	25 00
Total	$172 50

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

W. H. CARUTH, *Pres't.*

By order of board of directors.

Received, —— —, 188–, of the Arkansas & Louisiana Railway Company one hundred & seventy-two $\frac{50}{100}$ dollars in full of the above account.

J. D. BEARDSLEY.

Copy.

Accounts Payable.

Voucher 1323½.

WASHINGTON, ARK., *Mar. 20th*, 1887.

Arkansas & Louisiana Railway Company to J. D. Beardsley, Dr.

Address, Washington, Ark.

For amount of notes paid to me by the Washington & Hope R'w'y Co. and collected proceeds, applied to the use of the successive companies, with interest to April 1st, 1887	9,696 67

See list attached.

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

W. H. CARUTH, *President.*

By order of board of directors.

Received, —— —, 188–, of the Arkansas & Louisiana Railway Company ninety-six hundred & ninety-six $\frac{67}{100}$ dollars in full of above account.

J. D. BEARDSLEY.

356 Copy.

List of Duration Notes Paid, with Date of Payment.

1880.			
Dec.	18.	T. H. Simms	350 00
		W. P. Hart	350 00
	29.	A. B. Williams	250 00
	31.	E. D. Jett	125 00
1881.			
Jan'y	4.	A. H. Carrigan	125 00
	5.	W. H. Carruth	500 00
	12.	C. M. Conway	62 50
	"	H. B. Holman	100 00
	13.	A. N. Carrigan	75 00
	"	Jno. Justus	350 00
	15.	R. C. Phillips	225 00
	22.	J. R. May	25 00
	"	R. B. Williams	125 00
Feb'y	4.	W. N. Johnson	25 00
	5.	W. J. Ferguson	100 00
	18.	H. Lazarus	125 00
	"	C. Jagersfeld	50 00
	19.	S. E. Benson	25 00
	21.	A. J. Hawthorne	25 00
Mar.	22.	J. J. Thomas	112 50
	26.	W. D. Green	100 00
Sept.	22.	J. K. Jones	112 50
	"	J. D. Conway	68 75
		J. W. Williams	125 00
Dec.	23.	Ads. Stuart	200 00
1882.			
Jan'y	16.	J. K. Jones	50 00
	17.	W. H. Caruth	500 00
		T. H. Simms	350 00
Mar.	2.	J. K. Jones	37 50
	4.	A. J. Hawthorn	25 00
	11.	W. N. Johnson	25 00
	22.	H. J. Trembil	25 00
1883.			
Jan'y	13.	W. P. Hart	378 00
	14.	C. M. Conway	62 50
		Forward	5,184 25

357

1883.		Bro't forward	5,184 25
Jan'y	6.	A. H. Carrigan	132 65
	9.	E. D. Jett	131 25
	16.	T. C. Smith	110 00
	17.	Gray & Steve Carrigan	132 85
	18.	H. B. Holman	110 00
	19.	W. Rowton	61 90
Feb'y	3.	C. Jagersfeld	55 00
Mar.	8.	Geo. J. Smith	54 75
	14.	W. D. Green	100 00
	27.	J. R. May	28 00
Ap'l	19.	Jno. Justus	361 10
	27.	W. J. Ferguson	50 00
May	7.	Do. do.	50 00
1882.			
Jan'y	13.	J. K. Jones	50 00
1884.			
M'ch	18.	Carrigan Bros	141 60
June	28.	H. Wright	104 95
May	15.	A. N. Carrigan	20 00
1885.			
Oct.	8.	H. Lazarus	174 63
		H. Wright	151 15
1886.			
Feb'y	28.	J. J. Thomas	158 55
		Total	7,362 63
		Interest from date of payment to April 1st, 1887.	2,334 04
			$9,696 67

Notes collected by the Washington & Hope R'y, and interest thereon	6,499 13
Notes collected by the Arkansas & Indian Territory R'w'y, & interest thereon	2,356 51
Notes collected by the constructor and lessee, and interest thereon	841 03

358

Copy.

Accounts Payable.

Voucher 1324½.

WASHINGTON, ARK., *March 30th*, 1887.

Arkansas & Louisiana Railway Co. to J. D. Beardsley, Dr.

Address, Washington, Ark.

For balance due by Washington & Hope R'y on salary, as shown by the records in the suit now pending with P. F. Beardsley	2,500 00
Interest from Sept. 18th to April 1st, 1887	680 00
3 months' salary on construction for the Arkansas & Indian Territory R'd	600 00
Interest from Dec'r 1st, 1883, to April 1st, 1887	117 00
	$3,897 00

From sale of Washington & Hope R'w'y to date of construction contract.

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

W. H. CARUTH, *President.*

By order of board of directors.

Received, —— —, 188–, of the Arkansas & Louisiana Railway Company thirty-eight — & ninety-seven dollars in full of the above account.

J. D. BEARDSLEY.

Copy.

Accounts Payable.

Voucher 1325½.

WASHINGTON, ARK., *March 30th*, 1887.

Arkansas & Louisiana Railway Company to J. D. Beardsly, Dr.

Address, Washington, Ark.

For allowance for services as general manager, &c., from August 16th, 1886, to April 1st, 1887	2,400 00

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

W. H. CARUTH, *President.*

By order of board of directors.

Received, —— —, 188–, of the Arkansas & Louisiana Railway Company twenty-four hundred dollars in full of above account.

J. D. BEARDSLEY.

359 Copy.

Accounts Payable.

Voucher 616.

WASHINGTON, ARK., *Oct.* 19, 1885.

Arkansas & Louisiana Railway Co. to Henry Lazarus, Dr.

Address, Hope.

For cash payment on land purchased from J. H. Bell and conveyed by title bond, and deed afterwards taken from Lazarus to perfect title $150 00

(One hundred & fifty dollars.)

Rec'd payment, C. BOURNE,
Att'y for H'y Lazarus.

Chas. Bourne, att'y for Henry Lazarus, is authorized to receipt and collect this voucher.

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

——— ———,
Superintendent.

Received, —— —, 188–, of the Arkansas & Louisiana Railway Company — dollars in full of the above account.

——— ———.

Accounts Payable.

Voucher 1378.

WASHINGTON, ARK., *Oct.* 22, 1887.

Arkansas & Louisiana Railway Co. to J. D. Beardsley.

Address, Washington, Ark.

For amount paid for work on narrow-gauge engine as follows:

Oct. 10.	To cash paid labor repairing N. engine	3 10
" 15. "	do. do. do. do.	5 90
" 15. "	do. do. do. do.	4 35
		$13 35

Narrow-gauge X engine.

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

——— ———,
Superintendent.

Received, Oct. 22, 1887, of the Arkansas & Louisiana Railway Company thirteen $\frac{35}{100}$ dollars in full of above account.

——— ———.

Place to J. D. B. private ac.

360

Copy.

Accounts Payable.

Voucher 87.

WASHINGTON, ARK., *June* 28, 1887.

Arkansas & Louisiana Railway Co. to J. D. Beardsley, Dr.

Address, Washington, Ark.

For amount due for expenses, two trips to New York	300 00
One trip to St. Louis, Mo., & Cincinnati	75 00
	375 00

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, June 24, 1887, of the Arkansas & Louisiana Railway Company three hundred & seventy-five dollars in full of the above account.

J. D. BEARDSLEY.

Copy.

Accounts Payable.

Voucher 128.

WASHINGTON, ARK., *July 25th*, 1887.

Arkansas & Louisiana Railway Co. to J. D. Beardsley.

Address, Washington, Ark.

For amount due for expenses to New York & return, July 23, '87..... $175 00

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, July 25, 1887, of the Arkansas & Louisiana Railway Company one hundred & seventy-five dollars in full of above account.

J. D. BEARDSLEY.

361 Copy.

Accounts Payable.

Voucher 148.

WASHINGTON, ARK., *Aug. 9th*, 1887.

Arkansas & Louisiana Railway Co. to A. S. Aloe & Co., Dr.

Address, St. Louis, Mo.

For amount of invoice July 5th, '87, 1 Prentice level # 356, profile paper, steel chain, ½ doz. transit books, ½ doz. level books, & 2 lbs. keel $133 20

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

——— ———,
Superintendent.

Received, August 9th, 1887, of the Arkansas & Louisiana Railway Company one hundred & thirty-three $\frac{20}{100}$ dollars in full of the above account.

A. T. ALOE & CO.

O. M. RUDOLPH, *Witness.*

Accounts Payable.

Voucher 323.

WASHINGTON, ARK., *Nov. 12th*, 1887.

Arkansas & Louisiana Railway Co. to Baird & Caruth.

Address, Washington, Ark.

For money used for expense of J. D. Beardsley, W. H. Caruth, & H. H. Wheless to Little Rock in suit of P. F. Beardsley against J. D. Beardsley & Ark. & La. R'y.... $21 65

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, Nov. 12, 1887, of the Arkansas & Louisiana Railway Company twenty-one $\frac{65}{100}$ dollars in full of above account.

BAIRD & CARUTH.

362 Copy.

Accounts Payable.

Voucher 372.

WASHINGTON, ARK., *Dec.* 3, 1887.

Arkansas & Louisiana Railway Co. to J. D. Beardsley, Dr.

Address, Washington, Ark.

For amount due for expenses of trip to St. Louis Nov. 28, 1887 ..... $25 00

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

——— ———,

Superintendent.

Received, Dec. 3, 1887, of the Arkansas & Louisiana Railway Company twenty-five dollars in full of the above account.

———.

Please credit Maj. Beardsley's private ac.

H. H. WHELESS.

Accounts Payable.

Voucher 1371, old ac.

WASHINGTON, ARK., *Oct.* —, 1887.

Arkansas & Louisiana Railway Co. to T. Y. Williams, agent.

Address, Washington.

For amounts advanced G. M. Lewis to pay hotel bill at Nashville	16 00
& to go to Louisiana	7 00
To Wm. Bomar to go to Louisiana	5 00
	$28 00

These amounts collected by Louisiana North & South R'w'y Co. and this voucher is charged to them.

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

——— ———,

Superintendent.

Received, Oct. 6, 1887, of the Arkansas & Louisiana Railway Company twenty-eight dollars in full of above account.

T. Y. WILLIAMS, *Ag't.*

W. P. AGEE, *Witness.*

363 Copy.

Accounts Payable.

Voucher 1372, old ac.

WASHINGTON, ARK., *Oct. 7th*, 1887.

Arkansas & Louisiana Railway Co. to J. A. Cornish & Son., Dr.

Address, Nashville, Ark.

Sept. 28. For amount due for 4 stay pieces for iron car, 61 lb. . $1 83

Charge Louisiana North & South R'w'y Co.

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, Oct. 7, 1887, of the Arkansas & Louisiana Railway Company one $\frac{83}{100}$ dollars in full of the above account.

CORNISH & SON.

E. L. TAYLOR, *Witness.*

Accounts Payable.

Voucher 1736, old ac.

WASHINGTON, ARK., *Oct.* 17, 1887.

Arkansas & Louisiana Railway Co. to E. H. Linley, —.

Address, St. Louis, Mo.

For amount of invoice, Aug. 4, '87.....		116 27
Do.	do. 18, '87.....	69 59
Do.	do. 19, '87.....	17 10
Do.	do. 22, '87.....	2 09
		$205 05

Paid on ac. & to be charged to Louisiana North & South R'w'y Co.

Examined and approved. —— ——, *Auditor.*

Approved. —— ——,
Superintendent.

Received, Oct. 17, 1887, of the Arkansas & Louisiana Railway Company two hundred & five $\frac{5}{100}$ dollars in full of above account.

EZRA H. LINLEY.
T. P. SMITH, *Cashier.*

364 $XX $\frac{90}{100}$ ST. LOUIS, *Oct.* 12, 1887.

At sight pay to the order of Pacific Express Co. —— no —— $\frac{90}{100}$ dollars, value received, with exchange on New York or St. Louis.

DEERE, MANSUR & CO.

To J. D. Beardsley, Washington, Ark.
No. 7453.

365

Copy.

Accounts Payable.

Voucher 1379, old ac.

WASHINGTON, ARK., *Oct. 24th*, 1887.

Arkansas & Louisiana Railway Co. to Deere, Mansur & Co., Dr.

Address, St. Louis Mo.

For amount of sight draft No. 7453 on J. D. Beardsley..... .90

Paid on ac. of and to be charged to Louisiana North and South'n R'w'y.

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

——— ———,

Superintendent.

Received, Oct. 24th, 1887, of the Arkansas & Louisiana Railway Company ninety cents in full of the above account.

——— ———.

[Written across the face:] Draft attached.

Accounts Payable.

Voucher 1380, old ac.

WASHINGTON, ARK., *Oct.* 29, 1887.

Arkansas & Louisiana Railway Co. to T. Y. Williams, agent.

Address, Washington, Ark.

For amount of freight charges paid on acc't Louisiana North & South R'w'y Co's as per bills:

Oct. 5.	W.	W. B., # 23		1 50
12.		" 47		3 40
14.		" 57		90
25.	Ex—181	" 56		1 56
26.		" 105		75
				8 11

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

——— ———,

Superintendent.

Received, Oct. 29th, 1887, of the Arkansas & Louisiana Railway Company eight $\frac{11}{100}$ dollars in full of above account.

T. Y. WILLIAMS, *Ag't.*

W. P. AGEE, *Witness.*

366 Copy.

Accounts Payable.

Voucher 1383, old ac.

WASHINGTON, ARK., *Nov. 1st*, 1887.

Arkansas & Louisiana Railway Co. to Earnest Hozelman, Dr.

Address, Ozan.

For amount of account against D. H. Weaver, paid by Weaver in Louisiana and credited by La. N. & S. R'w'y to this company $4 00

Charge La. N. & S. R'w'y.

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

——— ———,
Superintendent.

Received, Nov. 1st, 1887, of the Arkansas & Louisiana Railway Company four dollars in full of above account.

E. HOZLEMAN.

J. M. HUDGENS, *Witness.*

Accounts Payable.

Voucher 1384, old ac.

WASHINGTON, ARK., ——— —, 188–.

Arkansas & Louisiana Railway Co. to T. Y. Williams, ag't, Dr.

Address, Washington.

For bills paid R. & T. A. Ennis for ac. La. N. & S. R'w'y, as per bills sent to said R. R.:

May	9th. Record book	7 50
July	22d.	6 90
Aug.	11th. Letter-heads, &c	10 85
	24th. Wall files	1 75
		$27 00

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

——— ———,
Superintendent.

Received, Nov. 1st, 1887, of the Arkansas & Louisiana Railway Company twenty-seven dollars in full of above account.

T. Y. WILLIAMS, *Agent.*

W. P. AGEE, *Witness.*

367

Copy.

Accounts Payable.

Voucher 818.

WASHINGTON, ARK., *Feb'y* 11, 1886.

Arkansas & Louisiana Railway Co. to Henry Lazarus, Dr.

Address, Washington.

For amount of note due Feb'y 7–10, 1886.....	162 11	
Interest	5 40	
	$167 51	
Less amount paid agent at Washington for freight on car goods per voucher 819.....	30 00	
		$137 51

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

——— ———,
Superintendent.

Received, Feb'y 11, 1886, of the Arkansas & Louisiana Railway Company one hundred & thirty-seven $\frac{51}{100}$ dollars in full of above account.

HENRY LAZARUS.

Copy.

Accounts Payable.

Voucher 262.

WASHINGTON, ARK., *Oct 15th*, 1887.

Arkansas & Louisiana Railway Co. to J. D. Beardsley, Dr.

Address, Washington, Ark.

For amount due for steel rails sold to Arkansas and Louisiana R'w'y in September, 1887, and put down in track north of Ozan, Ark., as follows:

103 tons & 2,120 lbs., at $38.00 per ton, delivered fr't on board cars at St. Louis, Mo.....	$3,949 96

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, Oct. 15th, 1887, of the Arkansas & Louisiana Railway Company thirty-nine hundred & forty-nine $\frac{96}{100}$ dollars in full of above account.

J. D. BEARDSLEY

368

Copy.

Accounts Payable.

Voucher 266.

WASHINGTON, ARK., *Oct.* 17, 1887.

Arkansas & Louisiana Railway Co. to J. D. Beardsley, Dr.

Address, Washington, Ark.

For amount due for splices & bolts furnished by him as follows, f. o. b. cars, St. Louis, Mo.:

Sept. 7.	1,200 splices, 19,800, @ 2.15	425 70
"	10 kegs 3½ x 34 *dolls*, 2,000, @ 3.10	62 00
30.	1,200 splices, 20,200, @ 2.15	434 30
"	10 kegs 3½ x 34 *dolls*, 2,000, @ 3.10	62 00
		$984 00

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, Oct. 17, 1887, of the Arkansas & Louisiana Railway Company nine hundred and eighty-four dollars in full of above account.

J. D. BEARDSLEY.

Copy.

Accounts Payable.

Voucher 950.

WASHINGTON, ARK., *May 10th*, 1886.

Arkansas & Louisiana Railway Co. to Baird & Caruth, Dr.

Address, Washington.

For money advanced J. D. Beardsley and expenses on trip to Louisiana in interest of the extension of the road.... $24 00

Above includes subscriptions to the newspapers, @ 1.50 each.

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, May 15, 1886, of the Arkansas & Louisiana Railway Company twenty-four dollars in full of above account.

BAIRD & CARUTH,
By AGEE.

369 Copy.

Accounts Payable.

Voucher 1199.

WASHINGTON, ARK., *Dec.* 29, 1886.

Arkansas & Louisiana Railway Co. to Providence Jewelry Co., Dr.

Address, St. Louis.

For one clock presented by R. R'd to W. H. Caruth, treasurer..... 37 60

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, Dec. 29, 1886, of the Arkansas & Louisiana Railway Company — dollars in full of above account.

—— ——.

[Written across the face:] Receipted bill attached.

Copy.

Accounts Payable.

Voucher no No.

WASHINGTON, ARK., *Jan.* 31, 1887.

Arkansas & Louisiana Railway Co. to T. Y. Williams, agent, Dr.

Address, Washington.

For—

* * * * * * *
* * * * * * *
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For paper, The Canadian American 2 00

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Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, Jan. 31, 1887, of the Arkansas & Louisiana Railway Company eighty-nine $\frac{7}{100}$ dollars in full of above account.

T. Y. WILLIAMS, *Ag't.*

370

Copy.

Accounts Payable.

Voucher 232.

WASHINGTON, ARK., *Sept. 20th*, 1887.

Arkansas & Louisiana Railway Co. to T. Y. Williams, ag't, Dr.

Address, Washington.

For—

* * * * * * *
* * * * * * *

Mr. Wheless' expenses to Little Rock..... 3 50

* * * * * * *

N. B.—The * * * represent items of amounts paid upon Co.'s ac. & wer- not called in question.

J. D. V., *Auditor.*

Examined and approved

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, Sept. 30, 1887, of the Arkansas & Louisiana Railway Company four hundred & twenty-six $\frac{9}{100}$ dollars in full of above account.

T. Y. WILLIAMS, *Agent.*

WM. P. AGRE, *Witness.*

Copy.

Accounts Payable.

Voucher 305½.

WASHINGTON, ARK., *Nov.* 4, 1887.

Arkansas & Louisiana Railway Co. to Mrs. M. H. Borden, Dr.

Address, Washington.

For amount due for meals furnished men at wrecks and work trains during months of July, $1.90; Aug., $1.65..	3 55
Sept., 5.30; Oct., 1.40.....	6 70
And Mr. Moore while in Washington.....	3 25
	$13 50

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, Nov. 4, 1887, of the Arkansas & Louisiana Railway Company thirteen $\frac{50}{100}$ dollars in full of above account.

M. H. BORDEN.

371 *Accounts Payable.*

Voucher 338.

WASHINGTON, ARK., *Nov.* 24, 1888.

Arkansas & Louisiana Railway Co. to H. H. Wheless, Dr.

Address, Washington, Ark.

For amount paid for expenses for one trip to Little Rock Nov. 2nd and one trip to Little Rock & Texarkana Nov. 22d $9 00

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, Nov. 24, 1887, of the Arkansas & Louisiana Railway Company nine dollars in full of above account.

H. H. WHELESS.

Accounts Payable.

Voucher —.

WASHINGTON, ARK., ——, 188–.

Arkansas & Louisiana Railway Co. to ——, Dr.

Address, ——.

For ——.

Examined and approved.

H. H. WHELESS, *Auditor.*

Approved.

J. D. BEARDSLEY,
Superintendent.

Received, —— —, 188–, of the Arkansas & Louisiana Railway Company — dollars in full of above account.

—— ——.

372 *Deposition — T. Y. Williams.*

My name is T. Y. Williams; am twenty-seven years of age, and am conductor on the A. & L. R'y.

Q. How long have you been in this position?

A. About eleven months.

Q. What was your occupation before?

A. I was station agent.

Q. Where were you stationed?

A. At Washington.

Q. As station agent, what was your duties?

A. To attend to the business of the station, such as receiving freight for shipment, delivering freight, and telegraph operator.

Q. Between what months and years were you acting as telegraph operator?

A. From 1886 to 1887—the latter part of Dec., '87.

(Witness is here shown eight separate pieces of paper and is asked, What are these papers?)

A. They are telegrams sent and received by me while operator. These papers read: Washington, Ark., Sept. 30th, 1887. D.
373 E. Garrison & Co., St. Louis: "Will we be safe in accepting Mr. Gun's draft for $1,700.00 on his people for purchase of engine?" (Signed) H. H. Wheless. Next: St. Louis, Sept. 30th, '87. H. H. Wheless, Washington, Ark.: If sight draft with engine consigned to your order think would be safe with full name and address of the parties Mr. Gun wants to draw on; will investigate. (Signed) D. Garrison & Co. Next: E. Thomas, Hope, Ark., Oct. 17th, 1887: Please give me weight of narrow-*gua*ge engine. (Signed) H. H. Wheless. Same date: H. H. Wheless, Washington, Ark.: The weight of the narrow-*gua*ge engine is 23,300. (Signed) Thomas. Next: E. Thomas, Hope, Ark.: Please ship narrow-*gua*ge engine to order; bill of lading will have to be presented before delivery of engine. (Signed) J. D. Beardsley. This telegram is not dated. Next: Oct. 16th, 1887. Holyneck Lumber Co., Suffolk, Va.: Engine was shipped Friday, 14th; bill of lading to Garrison, as requested; cost of getting to Memphis will be about $50.00, I think. (Signed) J. D. Beardsley. Next: Oct. 24th, 1887. From Suf-
folk, Va., to J. D. Beardsley, Washington, Ark.: Draft
374 for engine is paid; bill of lading not endorsed; wire agent N. B. R. R. to deliver to John A. Gun. (Signed) W. H. Jones, Jr., cashier. Oct. 25th, 1887. To W. H. Jones, Jr., cashier, Suffolk, Va.: Note indorsement on back of bill of lading near bottom. This will authorize the agent to turn over engine to Gun on delivery of the bill of lading. (Signed) J. D. Beardsley. These telegrams I hereto attach as part of my deposition, marked, respectively, Exhibit A, T. Y. Williams; Exhibit B, T. Y. Williams; Exhibit C, T. Y. Williams; Exhibit D, T. Y. Williams; Exhibit E, T. Y. Williams; Exhibit F, T. Y. Williams; Exhibit G, T. Y. Williams; Exhibit H, T. Y. Williams' deposition. These telegrams were sent and received by me, respectively, as telegraph operator of the A. & L. R'y Co., at the times mentioned in said telegrams.

Q. Do you know whether or not that narrow-*gua*ge engine was sent off?

A. I do; it was sent off.

Q. About what time?

A. In the fall of 1887, as near as I can recollect.

375 Q. What do you know, if anything, about J. D. Beardsley dealing in salt, either at Hope, Washington, Ozan, or Nashville, upon his own account?

A. I know that he handled salt at Washington, Ozan, and Nashville.

Q. In what quantities and when?

A. I think it was in the year 1887.

Q. If you have any account of this matter on any book kept by you please examine it and see what it contains in regard to said matter.

A. Referring to agent's cash book of freight of the A. & L. R'y Co., I find that I was mistaken in the year of these transactions. It was in the year 1886 in the place of '87. This book shows as follows: Fifteen cars, Dec. 31st, '86. I find altogether twenty-three cars of salt shipped over the A. & L. R'y to the account of J. D. Beardsley.

Q. What did J. D. Beardsley pay freight to the A. & L. R'y Co.?

A. I find they were deadheads over this line.

376 Q. Can you tell me how many of these twenty-three car-loads were shipped to Washington, Ozan, and Nashville?

A. I cannot tell exactly. The most of it was carried to Nashville.

Q. What was the rates for a car-load of salt from Hope to Washington at that time; what to Ozan, and what to Nashville? I mean local rates.

A. There was no local rate on salt to Washington in car lots at that time. I find a classification sheet which does show local rates at that time.

Q. What do you have from this classification sheet?

A. Fourth and fifth class car-loads Hope to Washington, 12c. per hundred pounds; Hope to Ozan, 20c.; Hope to Nashville, 25c. Salt comes under fourth class.

Q. What was the through rate on salt from St. Louis to each station on the A. & L. road, and what was the A. & L. R'y Co. receiving out of that rate? Give the amount per hundred pounds.

A. Through rates from St. Louis to Washington, 23⅜c. per hundred; 27c. to Ozan, and to Nashville, 30½c. I understand

377 that the A. & L. R'y Co. received 25 per cent. as its part.

Q. What is the weight of a car-load of salt?

A. One hundred barrels, or 30,000 pounds.

Q. Do you know whether these loads of salt were shipped through from St. Louis to the respective points on the A. & L., or whether they were billed to Hope and rebilled from Hope to the points on the A. & L.?

A. They were billed to Hope and rebilled to points on the A. & L.

Q. Were any of them billed beyond Hope from St. Louis or far as Washington or any other point?

A. Some of them were billed at St. Louis. To answer more definitely I will have to refer to the books.

Q. If you have examined the books, state as definitely now as you are able to do.

A. I find by examining the books that only five cars were shipped to Hope and rebilled; eighteen shipped from St. Louis to Washington.

Q. What became of these five cars shipped from St. Louis to Hope?

378 A. They were rebilled to Washington and carried to Nashville.

Q. What was done with the other eighteen billed from St. Louis to Washington?

A. The most of them went to Nashville.

Q. What amount of freight was collected upon said twenty-three car-loads of salt by the A. & L. R'y Co. from J. D. Beardsley?

A. $55.00 per car.

Q. What was done with that $55.00 per car?

A. $55.00 on these eighteen cars was the through freight from St. Louis to Washington.

Q. Was any freight collected on the five cars which were billed to Hope and rebilled?

A. No, sir.

Q. Did the A. & L. R'y Co. get any freight from hauling the five cars from Hope to Nashville?

A. No, sir.

Q. Did the A. & L. R'y Co. get anything for freight whatever for hauling the eighteen cars from Washington to Nashville?

379 A. Not through my office, as far as I know.

Q. To whom was the freight bills charged upon freight which came over the A. & L. R'y upon the books of the company?

A. They were charged to me at that time—that is to say, all freight billed to Washington.

Q. How did you get the amount of the charges?

A. By collecting the freight charges and accounting to the auditor of the A. & L. R'y Co. for them.

Q. In the matter of this salt, state how you obtained credit for any charges that may have been against you on that account.

A. The auditor gave me an order on W. H. Caruth for the amount.

Q. Did Mr. Caruth pay you the amount of the order?

A. Yes, sir; he gave me a receipt for it as so much money deposited for the company.

Q. How did this order to Caruth read?

380 A. As near as I can recollect, "W. H. Caruth, treasurer, please pay T. Y. Williams, agent (whatever the amount of the order was), and charge to J. D. Beardsley."

Q. What local rates did you have from Washington to Nashville on salt in car-loads?

A. We did not have any local rates on car-loads from Washington to Nashville at that time.

Q. What was the lowest rate from Washington to Nashville on freight at that time?

A. Fourth and fifth class car-loads, 14c. per hundred pounds.

Q. Do you know whether during the time you were acting as agent the complainant, P. F. Beardsley, shipped any freight over the A. & L. R'y?

A. I remember one or two shipments.

Q. State whether or not he was charged freight upon said shipments, and whether he paid them.

A. He was charged and paid freight.

Q. Do you remember whether P. F. Beardsley objected to paying such charges at that time?

381 A. He did not object to paying it if the management required it.

Q. Was there any reference at the time to the gen. manager by you?

A. Yes, sir.

Q. Who was the gen. manager at that time?

A. J. D. Beardsley.

Q. Did you refer the matter to him at the time?

A. Yes, sir.

Q. How did he decide it?

A. That P. F. Beardsley should pay the charges.

Cross-examined:

Q. Mr. Williams, where do you acquire your information that J. D. Beardsley handled that salt individually?

A. Because it was in his name.

Q. Do you answer that because the salt was shipped to J. D. Beardsley or because the transaction in connection with the salt was in J. D. Beardsley's individual name?

A. Because it was shipped to J. D. Beardsley, and that the

382 transaction, as far as I know, was in his name.

Q. Do you know what that salt was sold for at Washington, Nashville, and Ozan?

A. I think the salt was sold for $1.87½ per barrel at Nashville; some of it at $1.75 is my recollection.

Q. How much was sold at Nashville?

A. Most all of it was sold there, I think.

Q. Do you know how much was sold at Washington?

A. I do not think there could have been more than a car-load.

Q. At what price was it sold at Washington?

A. I do not remember.

Q. How much was sold at Ozan?

A. About half a car.

Q. At what price?

A. I do not know.

Q. Do you know what this salt cost in St. Louis?

A. I do not.

383 Q. What were the two lots of freight shipped by P. F. Beardsley over the road?

A. One was a lot of furniture from Nashville to Washington.

Q. What was the freight on it?

A. The freights, $1.90; charges, $2.50. The other lot was express on two trunks from Washington to Hope.

Q. Do you know what the charges were on these two trunks?

A. $1.50.

Q. Do you know, Mr. Williams, of any other shipments of freight over this line by P. F. Beardsley?

A. There was shipments at different times. I can mention one other, a lot of goods from St. Louis to Washington.

Q. Did he pay freight on them?
A. Yes, sir; he did.

T. Y. WILLIAMS.

EXHIBIT "A" TO T. Y. WILLIAMS' DEPOSITION.

WASHINGTON, ARK., 9, 20, 1887.

D. E. Garrison & Co., St. Louis, Mo.

Will we be safe in accepting Mr. Gun's draft, $1,700.00, sev-
384 enteen hundred dollars, on his people for purchase of engine?

H. H. WHELESS.

Dh. q. 265.

EXHIBIT "B" TO DEPOSITION T. Y. WILLIAMS.

Du. & Y., 4.50 p. m.

ST. L., 30.

H. H. Wheless, Washington:

If sight draft with engine consigned to your order think would be safe with full name and address of parties Mr. Gun wants to draw on, will investigate.

D. GARRISON & CO.

EXHIBIT "C" TO DEPOSITION OF T. Y. WILLIAMS.

10, 17.

E. Thomas, Hope:

Please give me weights of narrow-guage engine.

H. H. WHELESS.

385 EXHIBIT "D" TO DEPOSITION T. Y. WILLIAMS.

Du. & Y., 150, 17.

H. H. W., Hope:

The weight of the eng. is 23,300.

THOMAS.

EXHIBIT "E" TO DEPOSITION OF T. Y. WILLIAMS.

Y. & Du., 8.55 a. m.

E. Thomas, St., Hope:

Please ship narrow-guage engine to order so bill lading will have to be presented before delivery of engine.

J. D. BEARDSLEY.

EXHIBIT "F" TO DEPOSITION OF T. Y. WILLIAMS.

23. D. H., F. G., 264.

Y. & Di., 9.15 a. m.

Holyneck Lumber Co., Suffolk, Va.:

Engine was shipped Friday, 14th. Bill lading to Garrison, as requested. Cost of getting to Memphis will be about fifty dollars, I think.

J. D. BEARDSLEY.

Washington, Ark., Oct. 16th.

386 EXHIBIT "G" TO DEPOSITION T. Y. WILLIAMS.

24, paid. Do. & Y., 7.40 a. m.

SUFFOLK, VA., 24.

J. D. Beardsley, Washington, Ark.:

Draft for engine is paid; bill of lading not endorsed; wire agent N. B. R. R. to deliver to John A. Gun.

W. H. JONES, JR., *Cashier.*

EXHIBIT "H" TO DEPOSITION T. Y. WILLIAMS.

& Do., 10.20 a. m. D. H., Frq., 264.

10, 25.

W. H. Jones, Jr., cashier, Suffolk, Va.:

Note endorsement on back of bill lading near bottom. This will authorize the agent to turn over engine to Gun on delivery of bill lading.

J. D. BEARDSLEY.

D. H. q., 264.

387 *Deposition of Paul F. Beardsley.*

I am the complainant in this case. I am 45 years of age. I am the present superintendent of the A. & L. R'y for the receiver. As such superintendent I have general charge of all the affairs of said railway, acting under the immediate direction of the receiver. From an examination of the books of the A. & L. R'y Co., kept by W. H. Caruth and H. H. Wheless, the said Caruth having been president and treasurer, and the said H. H. Wheless having been auditor of said company for several years previous to the filing of the original bill in this cause and continuously thereafter until the appointment of the receiver herein, I find that upon the 12th day of April, 1887, there was an actual balance of cash on hand belonging to said company amounting to twenty-two thousand six hundred
388 and ninety-one $\frac{8}{100}$ ($22,691.08) dollars.

About this time one E. G. Merriam, an attorney of the de

fendant St. L., I. M. & S. R'y Co., accompanied by an auditor, whose name I do not now remember, also in the employ of said St. L., I. M. & S. R'y Co., came with the defendant John D. Beardsley to Washington, Ark. On the day after their arrival, Mr. Merriam, in company with John D. Beardsley, went over the Ark. & La. R'y to Nashville, Ark., and, as Mr. Merriam informed me, made an examination of the company's road and property.

On the same day the said auditor made a complete and thorough examination of the company's books and accounts.

Having previously informed Mr. Merriam of my interest in the Ark. & La. R'y Co., and having furnished him with true copies of both the opinion and decree rendered in this case, I asked
389 him to tell me the object of his examination of the property and books of said company, to which he replied that he had been instructed to make such an examination, and to make a report thereon, but for what purpose he was unable to inform me.

I then called his attention to the fact that there was a large sum of money in the treasury of said company which should be paid to the St. L., I. M. & S. R'y Co. under the terms of the settlement contract of June 11, 1885, mentioned in the pleadings. I also stated to him that this money was held in the treasury of the Ark. & La. R'y Co. in violation of the terms of said settlement contract, and that I, as a party in interest, objected to such large sum of money being so held, and I requested him to insist and demand in behalf of his railway company upon the payment of said money into the treasury of his company as provided in said contract.

390 I also called his attention to the provisions of said settlement contract, and insisted upon its strict enforcement.

Previous to this time, in the latter part of the year 1886, I had a conversation with Mr. George C. Smith, private secretary to Mr. H. M. Hoxie, gen'l manager of the St. L., I. M. & S. R'y Co., and who was acting in Mr. Hoxie's place at the time on account of said Hoxie's ill health, in which I complained to him that the net earnings of the Ark. & La. R'y Co. were not being applied in accordance with the terms of said settlement contract and I demanded a strict compliance with said terms on the part of his company.

He replied that he did not think his people were loosing any sleep on account of said indebtedness, but that as long as the minimum payment of $12,000.00 per year was paid he did not think they would make any fuss about it.

The books of the Ark. & La. R'y Co. show that the net
391 earnings of said company since Jan'y 1st, 1886, up to Octo. 1st, 1887, have amounted to more than $65,000.00, of which only $2,000.00 was paid to the St. L., I. M. & S. R'y Co. upon its indebtedness to said last-named company during that period. These books also show that the debt to that company, including interest to Jan'y 1st, 1886, amounted on that date to $113,197.85, and that after allowing credit for the $2,000.00 paid Jan'y 1st, 1887, said debt amounted on the 1st of October, 1887, to the sum of $123,299.24,

being an actual increase of said debt between said dates, a term of twenty-one months, of more than $10,000.00.

Q. Please examine the treasurer's books kept by W. H. Caruth and state what payments of money, if any, were made to J. D. Beardsley or for his account which were not legitimate charges against the Ark. & La. R'y subsequent to the filing of the original bill in this cause.

A. I find the following on page two hundred and forty-two of said book: March 22, 1886, cash to pay board of Mr. Moore
392 and others at hotel (Mrs. J. D. B.), $1.75; March 24th, 1886, cash paid J. D. Beardsley, expenses to N. Y., voucher # 891—amount, $114.00; March 27, 1886, cash paid, expenses J. D. Beardsley, J. D. Conway, and R. B. Williams to Little Rock, $13.00; March 29th, 1886, cash paid W. I. Perkins for work on Walker house, $10.00. On page 244 of said book I find the following: March 30th, 1886, to cash paid E. Bourne, $5.00; April 3rd, 1886, cash paid, expenses J. D. Beardsley and others to Little Rock, voucher # 907, $27.00. On page 248 I find the following: May 1st, 1886, cash paid Mrs. J. D. B. to pay Mr. Cochran's board at hotel, $2.00; May 8th, 1886, cash paid, expenses J. D. B. in Texas and Louisiana, voucher # 950, $24.00. On page 254 I find the following: July 10, 1886, cash paid Mrs. Anna Walker, voucher # 1030, $13.25; July 15th, 1886, cash paid Baird & Caruth, voucher # 1039, $70.20; same date, cash paid same, voucher # 1040, $175.00. On page 256 I find the following: July 21st, 1886, cash paid Baird & Caruth, voucher
393 # 1045—amount, $60.00. On page 266 I find the following: Nov. 15, to cash paid J. D. Beardsley, voucher # 1103, $100.00; Nov. 29, 1886, to cash paid J. D. Beardsley, voucher # 1165, $318.25; Dec. 2nd, 1886, to cash paid Baird & Caruth, voucher #1174, $6.50. On page 268 I find the following: Dec. 27, 1886, to cash paid J. D. Beardsley, voucher # 1192, $185.50. On page 270 I find the following: Dec. 30th, 1886, to cash paid Providence Jewelry Co., voucher 1199, $37.60; Jan'y 19, 1887, to cash paid V. Alderman, voucher # 1247, $2.50. I find on page 274 the following: Feb'y 25th, 1887, to cash paid J. D. Beardsley, voucher # 1268, $50.00. On page 276 I find the following: March 22, 1887, cash paid Baird & Caruth, voucher # 1304, $120.00; same date, cash paid —— ——, voucher # 1303, $210.00. On page 278 I find the following: April 6th, 1887, cash paid J. D. Beardsley, voucher # 1328, $35.00. On page 280 I find the following: June 27th, 1887, cash paid J. D. Beardsley, voucher # 1300, $277.00; same date, cash paid same, voucher # 1301,
394 $134.15; July 2nd, 1887, to cash paid J. D. Beardsley, voucher # 1322½, $172.50; same date, cash paid same, voucher # 1325½, $2,400; same date, cash paid same, voucher # 1324½, $3,897.00; same date, cash paid same, voucher # 1323½ (1328½), $9,696.67.

Q. Please examine the vouchers on file other than those about which you have just testified and state what payments of money, if any, were made to J. D. Beardsley or for his account which were not legit-mate charges against the Ark. & La. R'y Co. subsequent to the filing of the original bill in this cause.

A. In voucher # 900, dated March 31st, 1886, I find the follow-

ing: Burt's affidavit, $1.00; Alderman's affidavit, $1.00. In voucher # 1017, June 30th, I find the following: P'd J. M. Teeter's expenses to Washington, $7.50; paid Maj. Bowne, taking depositions, $4.00. In voucher # 1053, dated July 31st, I find the following: Affidavit in case P. F. *vs.* J. D. B., .75; Mr. Richardson's board, 1.75; R. S. Hays' deposition, $5.00. In voucher # 1120, dated Sept.
395 30th, '86, I find the following: J. D. Beardsley's expenses to Little Rock, $6.00. In voucher # 1201, Dec. 31st, 1886, I find the following: Paid J. H. Arnold, depositions, 5.00. In voucher dated Jan'y 31, 1887, I find the following: For paper, "The Canadian-American," $2.00. In voucher # 1325, dated March 31st, 1887, I find the following: Amount handed Mr. Hammett for expenses of self and Capt. Dozwell, "Shreveport to Washington and return," $25.00 (twenty-five). In voucher # 87, June 28th, 1887, paid J. D. Beardsley amount due for expenses two trips to New York, one trip to St. Louis and Cincinnati, total, $375.00. In voucher # 128, date- July 25th, paid J. D. Beardsley amount due for expenses to New York and return, July 23rd, '87, $175.00. In voucher # 232, Sept. 30th, 1887, I find the following: Mr. Wheless' expenses to Little Rock, $3.50. In voucher # 305½, Nov. 4th, 1887, I find the following: Paid Mrs. Borden board for Mr. Moore while in Washington, $3.25; voucher # 323, dated Nov. 12, paid Baird &
396 Caruth money used for expenses of J. D. Beardsley, W. H. Caruth, and H. H. Wheless in Little Rock, suit of P. F. Beardsley against J. D. Beardsley, $21.65; voucher # 338, Nov. 24th, '87, paid H. H. Wheless' expenses, one trip to Little Rock, Nov. 2nd, and one trip to Little Rock and Texarkana, Nov. 22, $9.00; voucher # 372, Dec. 3rd, 1887, paid J. D. Beardsley amount due for expense of trip to St. Louis, Nov. 28th, 1887, $25.00.

Q. Do you know of any other charges upon the books of the A. & L. R'y Co. for money, material, or supplies belonging to said company furnished to John D. Beardsley or for his account or taken away by said John D. Beardsley or by his order?

A. I find an account of money, material, and supplies furnished by the Ark. & La. R'y Co. while it was under the control and management of John D. Beardsley charged to the La. North and South R'y Co., a railway company in the State of Louisiana which was owned and controlled by him at the time said account was made. Said account is as follows:

	May, '87. 22 scrapers, shipped to Gibsland, @ 3.00.		$66 00
397	July, '87. 36 scrapers, shipped to Gibsland, @ 3.00.		108 00
	Aug. " 1 rail-laying car		40 00
Aug.	'87. 2 scrapers, do. 3.00.		6 00
"	" 3 wheel scrapers, " 16.00.		48 00
Octo.,	" Am'ts collected from Lewis and Bomar, money advanced them to go to Louisiana		28 00
	Am't paid for 4 stay-pieces for iron car..... .		1 83
	Amount paid E. H. Linley, see vou. 1076, old ac.		205 05
	" " J. D. Beardsley, see vou. 1379, old ac.....		90

	Amount paid T. Y. Williams, see vou. 1380, old ac.	8 11
	Amount paid E. Hozelman, see vou. 1383, old ac.	4 00
	" " T. Y. Williams, " 1384, "	27 00
Sept. '87.	" " " " 230, "	3 03
Nov. "	" " " " 348, "	8 48
" "	Rent of engine, old No. 1, from Sept. 15th to Dec. 8th, 1887	206 25
	Rent of eng., old No. 1, from Dec. 8th to Jan'y 8, '88	75 00
July, —.	Am't paid A. S. Aloe for level, &c., as p'r vou. #148	133 20
	Total	$968 85

Q. State what you know in regard to the items in said account relating to the rent of engine, old No. 1, from Sept. 15th, 1887, to Jan'y 8th, 1888—that is to say, by whom was said engine rented to the La. N. & S. R'y and by whom was the amount of rental fixed?

A. I was informed by employees of the Ark. & La. R'y that the engine was put in good order and repainted and lettered
398 before it was taken to Louisiana. J. D. Beardsley told me before the engine was taken away that he intended to take one of the engines belonging to this company to Louisiana, but he did not say which one. After it was taken away he told me that he had rented it to the La. North & South R'y and I suppose he fixed the amount of rent which he should pay for it. I find upon the books of the Ark. & La. Co. charges for labor and material used in putting this engine in order at the time it went away.

Q. Was the rate charged a fair rental value of said engine?

A. It was not.

Q. Do you know what would have been a fair rental value for said engine; if so, what is it?

A. Yes, sir; I think I know. The usual rental for such an engine from one R'y Co. to another would be about $10.00 per day, or if by the month, $250.00; two hundred & fifty dollars per month would be considered a reasonable rent.

Q. What do you know about the purchase by J. D. Beards-
399 ley, for the Ark. & La. R'y Co., of the S. E. quarter of sec. 30, in township 9 south, *range* in range 26 west? State all you know about it.

A. It is a part of a tract of land which was purchased from one Henry Lazarus by John H. Bell, who was acting for John D. Beardsley and the R'y Co. This land was held by Bell for some time, but it was finally conveyed to J. D. Beardsley by Lazarus in 1885, the railway company paying Lazarus $800, which was the purchase price agreed upon with Bell. The final settlement of this purchase appears upon the journal of the A. R'y & La. Co., page 170, under date of Octo. 20th, 1885.

Q. What do you know about the purchase of the west quarter of the S. E. quarter of the S. W. quarter, and the east ½ of the south-

west quarter of the S. W. quarter of section 30, in township 10 south, in range 25 west, containing altogether 30 acres and being the town site of the town of Ozan, on the line of the Ark. & La. R'y Co.? State all you know about it.

400 A. The first-mentioned of said tracts, containing ten acres of land, was purchased by the railway company from J. S. Conway for $100.00. The other tract, containing 20 acres, was purchased from Jas. R. May for $200.00. Conveyance of title to this land, as well as of all other lands purchased by the railway company, was at that time taken in the name of John D. Beardsley for greater convenience. The payments for this land were made by the Ark. & La. R'y Co., as appears on the cash book kept by W. H. Caruth, treasurer, on page 132, of date July 28th, 1883, to Jas. R. May, $200.00, and to J. S. Conway, $100.00.

Q. Why do you say that the payments of money appearing on the treasurer's book kept by W. H. Caruth, treasurer, and upon the vouchers about which you have testified were not legitimate charges against the Ark. & La. R'y Co.?

A. For these reasons: The item of $1.75, of date M'ch 22, 1886, was to pay board of Mr. Moore, the attorney of J. D. Beards-
401 ley, while at Washington engaged in his interest in this suit and not upon the business of the Ark. & La. R'y Co. The item of M'ch 24, 1886, of $114.00, contained in voucher # 891, was for John D. Beardsley's expenses to New York while engaged upon his own personal business and not upon business of the Ark. & La. R'y Co. Said railway company at that time had no business in New York and transacted no business there. The item of $13.00, of date M'ch 27, 1886, was for cash paid expenses of J. D. Beardsley and his attorneys, J. D. Conway and R. B. Williams, to Little — to defend this suit on the part of J. D. Beardsley. The item of $10.00, of date March 29th, 1886, was for cash paid W. I. Perkins for work on Walker house, which was the private residence of J. D. Beardsley, in which the R'y Co. had no interest. The item of $5.00, of date March 30th, 1886, was for cash paid C. Bourne, a notary public, engaged in taking testimony for J. D. Beardsley in this cause. The item of $27.00, of date April 3, 1886, was
402 for the expense of J. D. Beardsley and his attorneys at Little Rock while engaged in the defense of this suit, as — out in voucher # 907, of date Ap'l 8, 1886.

The item of $2.00, of date May 1st, 1886, was cash paid for Mr. Cochran's board at the hotel at Washington, Mr. Cochran being in no manner connected with the Ark. & La. R'y Co. or acting in its interest. The item of $24.00, of date May 8th, 1886, was for cash for expenses of J. D. Beardsley while engaged in his La. R'y project, as more fully appears by voucher # 950, dated May 10th, 1886. The item of $13.25, of date July 10, 1886, was for cash paid hotel expenses of John M. Moore, one of J. D. Beardsley's attorneys, while engaged in his interest in this suit and for board of Calhoun and others who were engaged with J. D. Beardsley in his La. project and were not acting in the interest of the Ark. & La. R'y Co., as more fully appears by voucher # 1030, July 9th, 1886. The item

of $70.20, of date July 15th, 1886, was for payment of ex-
403 penses of J. D. Beardsley and his witnesses, W. H. Caruth and H. H. Wheless, to Little Rock in preparing his defence to this suit, as more fully appears by voucher # 1039, of date July 15th, 1886.

The item of $175.00, of date July 15, 1886, was for expenses of J. D. Beardsley to New York in the interest of his Louisiana R'y project, as more fully appears by voucher # 1040. The item of $60.00, of date July 21, 1886, was for expenses of J. D. Beardsley in his defense of this action. The item of $100.00, of date Nov. 15, 1886, was for payment of J. D. Beardsley's expenses to New York in July, 1886, on his personal business and not in the interest of the Ark. & La. R'y Co., as appears by voucher # 1103. The Ark. & La. R'y Co. had no business in New York at that time and transacted none there.

The item of $318.25, of date Nov. 29, 1886, was for expenses of J. D. Beardsley to New York, Philadelphia, and other places upon his own business in connection with his Louisiana R'y project
404 and not in the interests of the Ark. & La. R'y Company, as appears by voucher # 1165. The item of $6.50, of date Dec. 2, 1886, was for personal expenses of J. D. Beardsley to Little Rock and not in the interest of the Ark. & La. R'y Co., as appears by voucher # 1174.

The item of $185.50, of date Dec. 27, 1886, was for expenses of J. D. Beardsley to New York on his personal business and not in the interest of the Ark. & La. R'y Co., as appears by voucher # 1192. The item of $37.60, of date Dec. 30th, 1886, was for payment of a clock presented by J. D. Beardsley to W. H. Caruth from personal considerations and charged to the Ark. & La. R'y Co., as appears by voucher # 1199.

The item of $2.50, of date Jan'y 19th, 1887, was for cash paid V. Alderman for his deposition in behalf of John D. Beardsley in this cause, as appears by voucher # 1247. The item of $50.00, of date Feb'y 25, 1887, was for expenses of J. D. Beardsley to St. Louis and Little Rock upon his own personal business and not in the
405 interest of the Ark. & La. R'y Co., as appears by voucher # 1268. The item of $120.00, of date March 22, 1887, and appearing in voucher #1304, was for interest paid Mrs. S. C. Beardsley, wife of J. D. Beardsley, on $1,200.00 for one year, when in fact the books of the Ark. & La. R'y Co. show that the money was borrowed on Jan'y 6, 1886, and returned Feb'y 25, 1886, a period of one month and nineteen days only. The item of $210.00, of date March 22, 1887, in voucher # 1303, was for expenses of J. D. Beardsley to New York on his personal business and not on business of the Ark. & La. R'y Co. The item of $35.00, of date April 6, 1887, in voucher # 1328, was for J. D. Beardsley's expenses to St. Louis, in company with Jno. A. Richardson, on business of his Louisiana R'y project and not on business for the Ark. & La. R'y Co. The item of $277.00, of June 27, 1887, in voucher # 1300, was for money paid J. D. Beardsley for furniture in the Nashville hotel,

which furniture was included in an account filed by
406 him upon the trial of the original bill in this cause and settled and determined by this court by its decree herein. The item of $134.15, of date June 27, 1887, in voucher #1301, was for money paid on account of expenses incurred in connection with his Louisiana R'y project and not in the interest of the Ark. & La. R'y Co. The item of $172.50, of date July 2, 1887, in voucher 1322½, which bears date March 30th, 1887, was money paid J. D. Beardsley on account of the old material of the Washington and Hope R'y Co., the whole of which had been fully passed upon and adjudicated by this court upon the hearing of the original bill herein. The item of $2,400.00, of date July 2, 1887, appearing in voucher #1325½, which bears date March 30, 1887, was for that sum of money paid J. D. Beardsley for allowances for services as general manager, &c., from Aug. 16, 1886, to April 1st, 1887, when in
407 fact no such services had been rendered by him, nor was anything whatever due him on that account, he having been regularly paid $200.00 per month in full for all his services as general manager, &c., according to his contract with the Ark. & La. R'y Co., as fully appears by the books of said company.

The item of 3,897.00, of date July 2, 1887, in voucher #1324½, which bears date M'ch 30, 1887, was for that sum of money paid J. D. Beardsley upon account of salary from Washington & Hope R'y Co. and interest thereon and salary from the Ark. & Ind. Ter. R'y Co. and interest thereon, when in fact nothing whatever was due him on said accounts or either of them, the same having been fully passed upon and fully determined by this court in the hearing upon the original bill herein.

The item of $9,696.67, of date July 2, 1887, in voucher #1323½, which bears date M'ch 30, 1887, was for that amount of
408 money paid J. D. Beardsley for what have been in this suit the "Bourns notes of the Washington & Hope R'y Co.," with interest thereon to April 1st, 1887, when in fact nothing whatever was owing to him on that account, the same having been passed upon, adjudicated, & fully determined by this court in the hearing upon the original bill herein.

The last four vouchers, numbered #1322½, #1323½, #1324½, and #1325½, were all issued and dated on March 30th, 1887, but the customary impression copies were not taken in the book kept for that purpose until about July 1st, 1887. Unlike all other vouchers issued by the Ark. & La. R'y Co., these vouchers are signed, "W. H. Caruth, president, by order of board of directory." These vouchers, unlike all others up to that date, so far as I have observed, bear ½ numbers. The book kept by W. H. Caruth, treasurer, shows these vouchers to have been paid by him July 2nd or more than three months after date upon which they were issued. The
409 items mentioned in the other vouchers about which I have testified, commencing with March 31, 1886, and ending with Dec'r 3, 1887, are for money paid out of the treasury of the Ark. & La. R'y Co. on account of expenses incurred by John D. Beardsley in defending this action after the filing of the original bill herein

and in carrying out his La. R'y project and were not incurred in the interest of Ark. & La. R'y Co. or for its benefit. None of them were legitimate charges against the A. & La. R'y Co., and should not have been paid out of its treasury. The items of $375.00 and $175.00, for J. D. Beardsley's expenses to New York in June and July, 1887, were for expenses incurred by said J. D. Beardsley in concluding his sale of 51 % of the stock and bonds and pledging the remaining 49% thereof to Jay Gould.

Q. Has any part of the account mentioned by you as
410 charged to the La. N. & S. R'y Co. been paid or is it due and unpaid?

A. No, sir; it has not been paid, but is all due and unpaid.

Q. Has demand for payment of it been made by the receiver, W. P. Hart, since the road came into his possession?

A. It has been demanded, and payment refused by J. D. Beardsley.

Q. What was the condition of the road-bed and other property of the Ark. & La. R'y Co., including rolling stock, water tanks, and buildings, at the time the receiver took charge?

A. The road-bed was in a deplorable condition, with the exception of about 9 miles of the upper end of the line, which was laid with steel rails from the commencement (except about one mile, which was laid with steel in Sept. of 1887). About sixteen and a half miles nearest to Hope was laid with old iron rails, a great many of which were very badly worn. The ties in this portion of
411 the road were also beginning to get very rotten; wrecks were of frequent occurrence, even with the greatest care, in the running of trains. The only coach for the transportation of passengers owned by the company had been turned over in the ditch and badly damaged during the summer of 1887, and no effort had been made to have it repaired. The head-lining had been torn in strips when the car was overturned, and had not been repaired. The tin roof was in such bad condition that the car was little protection in rainy weather, and ladies were sometimes compelled to get up into the seats to keep out of the water which accumulated on the floor. Many of the windows were broken, and had been in that condition for a good while. No water tanks had ever been constructed on the line of the road from the date of its organization.

The platforms were getting quite rotten in places and need-re-
412 pairing. The company owned four locomotives, one of which had been out of service for something near a year and needed extensive repairs before it could be used. Two of the engines had been purchased new in Dec. of 1886, and they were the only rolling stock upon the road that was in any kind of serviceable condition. The company owned no box cars whatever, and owned four flat cars, which were serviceable only for construction purposes. One of the engines which was in good order was carried down to Louisiana and used in constructing the La. N. & S. R'y Co. The property as a whole may be said to have been in bad condition when turned over to the receiver.

Q. What amount of steel rails, if any, were furnished by John

D. Beardsley to the Ark. & La. R'y Co. and placed in its track since the filing of the original bill in this case?

A. During the summer of 1886 something less than half a
413 mile of new steel rails were purchased through D. E. Garrison & Co., of St. Louis, at a cost of about $1,500.00, and during the summer of fall of 1887 a little over one mile of new steel was purchased and placed in the track at a cost of $——. This covers all the steel rails put into the track of the A. & L. R'y during the time mentioned until after the appointment of the receiver, since which time about four miles of new steel rail has been purchased and placed in said track.

Q. John D. Beardsley, in his answer to the supplemental bill herein, states that "he has furnished to his codefendant and placed in its tracks about forty-five hundred dollars of steel rails, splices, and bolts, which were purchased by him for his said road in Louisiana, and for which said Arkansas and Louisiana R'y Co. has not paid him and is now indebted to him." Is this true?

A. No, sir; that is not true. J. D. Beardsly furnished no
414 rails to the Ark. & La. R'y Co. excepting those last referred to by me as having been put in the track during the summer or fall of 1887, and for these he was paid in full the sum of $4,933.96, as per vouchers #262 and #266, which said sum was paid him by W. H. Caruth, treasurer, and charged to the Ark. & La. R'y Co. on his cash book, pages 20, of date Oct. 15 and Oct. 17, 1887.

Q. Did you at any time since the decree of this court upon the original bill herein have a conversation with the defendant Jay Gould in relation to the matters in controversy? If so, state what said conversation was, giving time, place, and persons present.

A. On or about Dec. 31, 1886, I was in the city of New York, and, being desirous of obtaining possession of my one-third of the first mortgage bonds of the A. & L. R'y Co., which were held by R. S. Hayes, trustee, as collateral security for the payment
415 of the debt of said company to the St. Louis, Iron Mountain & Southern Railway Company, I called upon Mr. Jay Gould, at his office, in said city, accompanied by my legal adviser, Dan. W. Jones, Esq., and I then and there asked Mr. Gould if upon the payment of one-third of said debt by me he would deliver to me one-third of the bonds so held as collateral security. To this Mr. Gould replied that he would be very glad to comply with my request if there were no legal objections to his doing so. He then went out and shortly returned with his attorney, Judge J. F. Dillon, and thereupon I exhibited to them a certified copy of the decree and the opinion of this court rendered in this cause on the 20th day of August, 1886. Judge Dillon carefully read and examined said opinion and decree in the presence of Mr. Gould, and the same were fully discussed by Judge Dillon and Mr. Jones in all
416 their bearings. After doing this Judge Dillon stated to Mr. Gould that he saw no legal objection to his complying with my request and delivering to me one-third of said bonds upon my paying one-third of the amount due thereon, together with the

amount found to be due John D. Beardsley under said decree, provided that at the time of such payment and delivery no appeal had been taken from said decree, and that in his opinion this was my right.

Afterwards, early in Feb'y, 1887, I again called upon Mr. Jay Gould at his office and stated to him that I was then prepared to carry out my proposition.

He again referred me to Judge Dillon, saying that he was fully authorized to take up the matter with me and arrange it. I immediately went to Judge Dillon's office and stated to him my wishes. He asked me to let him again look over said opinion and decree, and allow him to take them home with him that evening and examine them at his leisure, which I did. He then re-
417 quested me to call at his office at eleven o'clock the following morning, and he would then be ready to act in the matter.

He further said that Mr. Gould had expressed himself to him as being anxious to comply with my wishes.

The next morning, at the appointed time, I called at Judge Dillon's office. He came in a few minutes later with the opinion and decree in his hand and handed them to me, saying that he found no obstacle in the way of complying with my wishes, and that he would communicate by wire with their local attorneys for the purpose of ascertaining that no appeal had been taken, &c.

He then wrote a telegram, of which the following is an exact copy:

FEB'Y 8, '87.

Thos. J. Portis, Esq., St. Louis, Mo.:

The Iron Mountain Company loaned John Beardsley and associates and the Arkansas and Louisiana Railroad Company about one hundred and twenty thousand dollars. The United
418 States circuit —— in the suit of Paul Beardsley against his brother and the railway decreed that he was the owner, among other things, of one-third of two hundred and forty bonds held by the Iron Mountain Company as security, and was entitled to have them and certain stock on the judgment of about seventy-eight hundred dollars. Paul Beardsley wants to pay one-third of the Iron Mountain debt and have eighty of the bonds released. We desire to take the money and release the bonds if we can safely do so. We see no reason why, if the amount of the decree is paid and no appeal has been taken, we should not do so. Communicate, if necessary, with Dodge and Johnson, the local attorneys, by wire, and give us an answer as soon as possible.

DILLON & SWAYNE.

This telegram was sent and Judge Dillon requested me to call again the next morning, when he said he thought he would have an answer. I called upon him again the next morning,
419 when he handed me a telegram, of which the following is an exact copy:

Dated ST. LOUIS, MO., *Feb'y 9th*, 1887.

To Messrs. Dillon & Swayne, N. Y.:

Your telegram about the Beardsley bond received. We understand the whole matter fully by a written instrument of June 11th, 1885, between the two railway companies, John D. Beardsley and associates, of whom Paul Beardsley was one. The amount of the indebtedness to the Iron Mountain Railway Company was fixed, the payment of said debt secured by the bonds in question; all of said bonds to be so held until the entire debt is fully paid. Paul Beardsley made the same proposition here, stated in your telegram, and it was declined upon my advice to that effect, and I still strongly advise against it because I think it would be unsafe. John D. Beardsley has given us notice not to deliver any of said bonds to Paul Beardsley and that he intends to appeal the case and will hold this company liable for the par value of all bonds turned over to said Paul Beardsley.

420 (Signed) THOS. J. PORTIS,
Gen'l Att'y.

Judge Dillon then said to me that under these circumstances he could not advise Mr. Gould to deliver me the 80 bonds unless I would give him an indemnifying bond, which I declined to do, and here this negotiation ended. He then, at my request, gave me the two telegrams, copies of which I have just stated.

Q. If you know, either from your personal knowledge or from examination of the books of the railway company or both, about John D. Beardsley engaging in the sale of salt which was hauled over said railway free of freight charges, please state all you know about it.

A. During the fall of 1886 and spring of 1887 I saw large quantities of salt being hauled over the road and piled upon the platform around the depot at Nashville, and, upon inquiring of the
421 agents, I was told that this salt belonged to John D. Beardsley and was being sold for his account. I then made examination of the freight books at the agent's office at Washington and found that, commencing with October, 1886, and ending with Feb'y, 1887, there had been shipped to J. D. Beardsley altogether twenty-three car-loads of 100 barrels each, aggregating 2,300 barrels of salt. Of these the books show five cars to have been billed to Hope, and from there hauled to Nashville free of any charges for freight by the Ark. & La. R'y. The remainder of the twenty-three cars, or eighteen cars, appear to have been billed upon through billing from St. Louis to Washington at a rate through which was the same as charged to other shippers between St. Louis and Hope, viz., $55.00 per car-load of 100 bbls. These 18 cars were then hauled from Washington to Nashville free of freight charges by the said railway.

Q. If this salt had been shipped over the Ark. & La. R'y
422 **by any of the Nashville merchants state, if you know, what would have been the customary charges upon it for freight**

between Hope and Nashville; also between Washington and Nashville.

A. During my connection with the road nor at any time since have I ever known of any rate upon salt between Hope and Nashville less than 12½ cents per 100 pounds. There was no established rate for salt between Washington and Nashville upon the tariff of the Ark. & La. R'y at that time. The lowest rate shown upon said tariff in effect at that time between the points named for any class or commodity was 10 cents per 100 lbs.

Q. Do I understand you to say that this salt was shipped over the A. & L. R'y, as you have stated, upon the private account of J. D. Beardsley, and not for the benefit of the Ark. & Louisiana R'y Co., and that no charge was made against the said J. D. Beards-
423 ley for such shipments?

A. Yes, sir; such are the facts.

Q. What amount is justly due the Ark. & La. R'y Co. for freight upon these 23 car-loads of salt?

A. The freight charges upon the five cars shipped to Hope and hauled from there to Nashville over the Ark. & La. R'y would amount to $187.50, and the freight upon the 18 cars hauled from Washington to Nashville would amount to $540.00, amounting in the aggregate to the sum of 727.50.

Q. Do you know of any other car-load shipments made by John D. Beardsley for his own private account while he was the manager of said railway upon which no charges for freight were made against him; if so, state what you know, confining yourself to the period since the filing of the original bill in this cause.

A. Yes, sir; I know that during the summer of 1886 he
424 shipped one or two car-loads of shingles, one at least, upon which he paid no freight charges. He also shipped a car-load of coke from Hope to Nashville upon which no freight was collected for the Ark. & La. R'y.

Q. What amount is justly due the Ark. & La. R'y Co. for freight charges upon these shipments?

A. The customary charges on the shingles at that time and since then was 25 cents per thousand. The car-load referred to contained 100 thousand, and the charges upon them from Hope to Washington would amount to $25.00. Many of these shingles were afterwards sold by him to various parties along the line of the railway, and by his instructions they were delivered to the purchasers free of any freight charges. 25 thousand of these shingles were sold by him to the railway company at a profit of about one dol-
425 lar per thousand over what he paid for them. The car of coke shipped from Hope to Nashville contained about thirteen tons, and the customary charges upon it would have amounted to at least $52.00.

Q. Did you at any time since the filing of the original bill in this cause make any shipments for your own account over the Ark. & La. R'y; and, if so, were the customary freight charges collected upon them from you?

A. Yes, sir; I made some small shipments over the road; one

shipments of household goods from Nashville to Washington during the summer of 1887, and I was not only charged full tariff rates upon them, but when I paid the freight charges I found that I was also charged storage for a part of the time they remained at Nashville. I was also charged full rates upon other shipments of both freight and express and for the use of the telegraph and the
426 telephone lines belonging to the Ark. & La. R'y, and I was also required to pay full rates of passenger fare for both myself and members of my family upon the trains of said railway.

Q. The defendant, John D. Beardsley, in his answer states that the litigation growing out of the unwise and unlawful discriminations at Nashville, Ark., alleged in your supplemental bill, all originated at a time when you were acting as assistant superintendent or master of transporation of this road and had your headquarters at Nashville, and that the course pursued by the road was strongly advised and was almost entirely carried out by you, and the troubles and litigations to which you refer in said bill were in a large measure due to your conduct; is this true? State the facts in regard to these matters.

427 A. It is true that a large part of the discriminations referred to were carried on while I was assistant superintendent of the road and lived at Nashville, Ark. They were commenced, however, nearly one year before the completion of the track to Nashville.

It is not true that I ever advised them or approved of them. On the contrary, I opposed them so strongly at the outset that he became very much annoyed by my opposition, and said that so long as he controlled the road he would use it for the benefit of himself and friends as he pleased, and if I did not approve I could take any course I pleased about it. As to their being almost entirely carried out by me, this is not true, except in so far as I was compelled to carry them out under his positive instructions and orders.

428 Cross-examined:

Q. Mr. Beardsley, in your examination-in-chief you say that the books of the Arkansas and Louisiana R'y Co. show that the net earnings were $65,000, of which only $2,000 was paid to the St. L., I. M. & S. R'y on its indebtedness to the said last-named company during that period. Do you know when first payment of the indebtedness was due?

A. The contract provided that not less than $12,000 should be paid each year.

Q. Do you know date of contract?

A. June 11th, 1885.

Q. Do you know whether under the terms of that contract a payment was to be made during the year 1885?

A. I think that the terms of the contract provided that all the net earnings of the A. & La. R'y Co. should apply to the pay-
429 ment of the debt, but at least $12,000 per year must be paid each year, commencing with Jan., 1886.

Q. Do you know whether there was a payment on or about Jan. 1st, '86, of $10,000?

A. I think there was.

Q. Do you know where the money came from to make that payment?

A. It came from the earnings of the road principally.

Q. You say in your examination-in-chief that the books of the A. & L. R'y Co. show, March 24, '86, cash paid J. D. Beardsley for expenses to New York, voucher 891—amount, $114.00. Do you know what business J. D. Beardsley was on at New York at that time?

A. Not definitely. My understanding was that he was endeavoring to raise money from parties in New York.

Q. From whom did you understand that?

A. I do not know that I can say exactly from whom I ob-
430 tained the impression, unless from conversation with J. D. Beardsley.

On my examining the books of the company I find certain payments made to a man named Cochran. I am under the impression that the name Cochran was intended for Calhoun, and if I am correct in this impression the name Cochran which occurs in my deposition-in-chief should be Calhoun.

Q. I find in your deposition-in-chief that you say on May 1st, '86, I find the item, Cash for J. D. Beardsley to pay Cochran (Calhoun), board at hotel, $2.00. Do you know what business Mr. Calhoun was on at that time?

A. I only know from hearsay and what the book show-.

Q. You say, March 8, '86, cash paid expenses for J. D. Beardsley in Texas and La., voucher 950, $24.00. Do you know what business he was on in Texas and La. at that time?

A. I understood from him that he was negotiating with
431 parties in Louisiana for a charter, with a view of extending it and making it a part of this road.

Q. Do you remember at what time you received that information?

A. I do not remember definitely, but some time in the summer of 1886.

Q. You say that the item of $105.00, July 15th, 1886, was for expenses of J. D. Beardsley to N. Y. in the interest of his La. R'y project. How do you know what business he was then on?

A. My recollection is that I obtained my information on that subject from J. D. Beardsley at different times.

Q. Can you specify any dates or places at which you had these conversations?

A. I had conversations with him on the train, in riding over the road, on several occasions. I had conversations with him in the office at the depot several times and other conversations at
432 other places which I could not now definitely designate, both at Washington, Ark., and elsewhere.

Q. Do you remember if any one was present except yourself and J. D. Beardsley?

A. I do not remember of any person being present at any of these

conversations. During the summer of 1886 we talked over our differences frequently. I will say that I remember distinctly one conversation right on the end of the depot platform which was previous to July, '86. I cannot locate it more definitely. I know that it was before the case was tried in July.

Q. Do you remember what the subject of this conversation was—what the purport of it was?

A. I could not say what it was more definitely than that we talked over the differences between us; that was the principal part of our conversation.

Q. Do you know whether his trips to N. Y. and his La. project were discussed in that conversation?

433 A. I cannot be positive, but I think they were. I know that he told me in that conversation that he could extend the road independent of me and my interests.

Q. You say the item of $60.00, of date July 21st, 1886, was for expenses of J. D. Beardsley in his defense of this action. Do you know the several items that go to make up that $60.00?

A. It refers to July 20, '86. The voucher reads: For money advanced for J. D. Beardsley and used as follows: Expenses to St. Louis and Little Rock, July 11th, 1886, $50.00; paid attorneys for taking depositions in case P. F. Beardsley *vs.* J. D. Beardsley, $10.00—total, $60.00.

Q. Do you know what the business of J. D. Beardsley was in St. Louis at that time and whether he was there on personal business or on business in connection with the company?

A. My understanding was that he was there on some business connected with this suit. I was informed by my counsel

434 that Mr. Moore had asked for an extension of time for him to go to St. Louis and it was my understanding that his trip was for some depositions or information which he wanted to use in the final hearing of this case. The time of hearing was then extended, I think, until the 14th of July for that purpose.

Q. You say that the item of $100.00, of date Nov. 13, 1886, was for payment of J. D. Beardsley's expenses to N. York in Sept., 1886, on his personal business and not on business for the A. & L. R'y. The A. & L. R'y had no business in N. York at that time and contracted none there. How do you know for what purpose J. D. Beardsley went to N. Y. on that occasion?

A. My information was obtained from a conversation I had with him either previously or about that time. I cannot say which. I will say this, that in Oct., 1886, that I met him in New York

435 myself and had a conversation with him, in which the negotiations which he was carrying on there were talked about and referred to.

Q. What were these negotiations which were discussed then?

A. Negotiations for the purpose of raising money to build this road into La., or that road to connection with this or both. I will say further that he stated to me that he did not recognize me or my interest, and that he could get all the money that he wanted to extend the road independent of me or my interests, and that he

would take very good care that I should have no interest in any extensions that he might make.

Q. You say that the item of $318.25, of date Nov. 29th, 1886, was for expenses of J. D. Beardsley to New York, Phila., and other places in connection with his La. R'y project. How do you
436 know what his business was on that trip?

A. My information was derived from the same source—that is, from conversations with J. D. Beardsley.

Q. Can you remember the time or places of these conversations?

A. Not more definitely than I have before stated.

Q. You say the item of $185.50, of date Dec'r 27, '86, was for expenses of J. D. Beardsley to New York on his personal business and not in interest of the A. & L. R'y Co. How do you know what his business was on that trip?

A. From the same source, and my information was derived from various other sources in regard to his negotiations in New York.

Q. Can you name any of these other sources from which you derived your information?

A. Friends of mine informed me of the negotiations which he was attempting to make there.

Q. Can you name any of those friends?

A. I decline to do so.

Q. You say that the item of $37.60, of date Dec. 30, '86,
437 was for payment of a clock presented to W. H. Caruth from personal consideration and charged to the A. & L. R'y. Why do you say that that clock was presented from personal considerations?

A. Because I knew that he was a very warm personal friend and advocate of his, J. D. Beardsley's, interests.

Q. Have you any other reason for your opinions upon that subject, Mr. Beardsley?

A. I do not know of any other. I know that he was not in the habit of giving presents to anybody unless they would count for something.

Q. Do you know whether this clock was presented at Christmas?

A. I do not know when the clock was presented.

Q. Do you know whether Christmas presents were made to employees of the company generally at that time?

A. I think there is a charge on the books against the company for Christmas presents, but I do not know when they were presented. I know nothing personally as to whether they were
438 or were not presented; I think I was absent from Washington at that time.

Q. You say the item of $50.00, dated Feb'y 25th, '87, was for expenses of J. D. Beardsley to St. Louis and Little Rock on personal business and not in the interest of the A. & L. R'y. How do you know what J. D. Beardsley's business was at St. Louis and Little Rock upon that occasion?

A. My knowledge was obtained in the same way before stated. I knew of no business of the company's at either places at that time.

Q. Were you in the employ or in any way connected with the business of the A. & L. R'y Co. at that time?

A. I was not, but I was familiar with the business of the company, and knew pretty well everything that was going on from frequent examinations of the books.

Q. Were any negotiations of the company for money ever entered upon the books of the company until those negotiations assumed the forms of contracts or accounts?

439 A. I think not, except as charges for expenses, such as the ones referred to.

Q. Did those charges for expenses show the purpose of the trip in which the expenses were incurred?

A. This one does not, but the trip was made about the time a hearing was had on the master's report upon the original suit in this case, and my impression is that the trip was made in connection with that business.

Q. You say the item of $200.00, of date M'ch 20, '87, in voucher 1303, was for expenses of J. D. Beardsley on his personal business and not in the interest of the A. & L. R'y Co. In what manner were those expenses incurred?

A. They were made on a trip to New York by J. D. Beardsley in the early part of the month, at which time he made a personal contract with Mr. Gould, in which the A. & L. R'y Co. had no interest whatever.

Q. Do you know whether he transacted any business for the company on that trip?

440 A. I do not think that he did; if he did I never heard of it.

Q. Do you know whether J. D. Beardsley went to New York for the purpose of making this contract with Mr. Gould?

A. I think that he did.

Q. What facts led you to think that, Mr. Beardsley?

A. The fact that he did make the contract, as I subsequently learned, is the strongest fact that led me to believe that that was his business there.

Q. Is there any other fact that led you to believe this?

A. I was advised previous to this trip of his endeavoring to make a negotiation with Mr. Gould.

Q. Will you state, Mr. Beardsley, who advised you?

A. Friends of mine in N. Y. I will state also that, in a conversation with Mr. Gould, either about the latter part of Dec. or the early part of Feb'y, '87, at which time I had a personal conference with Mr. Gould and endeavored to sell him my

441 interest, he informed me that he could buy the remaining interest for a price not greater than I asked for mine; I think he used the words, I can buy your brother's interest for less than you ask for yours.

Q. You say that the item of $35.00, of date April 5, '87, voucher 1328, was for J. D. Beardsley's expenses to St. Louis in the company of John A. Richardson, on business for his La. R'y pro-

ject, and not in the interest of the A. & L. R'y Co. Do you know what Mr. Beardsley's business was on that trip?

A. My recollection is that Mr. Richardson came here from La., and that he, in company with Mr. Richardson, went to St. Louis, as I was informed, for the purpose of seeing Mr. S. H. H. Clark on some business in connection with the La. enterprise. In looking over the books immediately on return of J. D. Beardsley, I saw the expense of the trip charged to the A. & L. R'y. My recollection
442 is that this is the voucher covering the expenses of that trip.

Q. Will you state from whom you received the information as to the purposes of this trip?

A. I knew that Mr. Richardson had been here on several occasions negotiating with J. D. Beardsley in connection with the La. enterprise. In addition to this I was advised by friends of mine as to their movements, whose names I do not care to give. I will say that during this year and for some time previous I had kept a diary in which I noted down from day to day all the facts which I obtained from all sources which referred to or had any connection with J. D. Beardsley and his movements. I have mislaid this diary, but think I can find it, and will endeavor to do so if I can. I can show the dates of the various trips that were made and give the object of the trips as I learned from various sources.

443 Q. Will you attach a copy of the diary with your deposition if you can find it?

A. I will file the book itself.

Q. You say that the item of $207.00, of date June 27, 1887, in voucher 1300, was for money paid J. D. Beardsley for furniture in Nashville hotel, which furniture was included in an account filed by him upon the trial of the original bill in this cause and settled and determined by this court by its decree herein. Was that furniture furnished to the company by J. D. Beardsley?

A. Referring to voucher, I find that the impression of that voucher was not taken in its regular order. It comes on the books following voucher 1323. The furniture was put in the hotel about the month of Feb'y, 1886. It was only a lot of old furniture which J. D. Beardsley sent to the hotel from his residence in Washington. I am not positive about all the items in this voucher having been on the account referred to, but I am positive that they were all
444 in it with the exception of one or two items.

Q. Is that furniture used in the hotel at Nashville?

A. I think it is.

Q. Has any of it fallen to pieces?

A. I think there were several pieces fell to pieces and had to be repaired more than once, if I am not mistaken.

Q. Has J. D. Beardsley ever been paid anything for that furniture except by that voucher just mentioned?

A. A greater part, if not all, of this furniture was included in an account upon the final hearing on the original bill and passed upon by the court.

Q. Do you know whether J. D. Beardsley has had any compensation for that furniture other than as shown by voucher 1300?

A. I know that the account upon which he drew money in this voucher was settled and determined by the court in its decree in this case; further than this I do not know.

445 Q. You say that the item of $134.15, of date June 27, '87, in voucher No. 1301, was for money paid on account of expenses incurred in connection with his La. R'y project and not in the interest of the A. & L. R'y Co. How do you know the purpose for which those expenses were incurred?

A. In the same general way in which I have stated in regard to the other vouchers, and, in addition, my information was derived from the voucher itself. The voucher reads: To J. D. Beardsley, for amount paid by J. D. Beardsley on account of R'y matters—first amount paid Dr. Carrigan for Bomar, $12.75; amount paid Dr. Carrigan for Roots, $1.40; amount paid Calhoun for expenses in La., $50.00; amount paid John Richardson's expenses in La., $20.00; amount paid John Richardson's expenses in La., $20.00; amount paid R. B. Samuels, $30.00; total, $134.15. I will say in explanation that these same items were included

446 in voucher 1103, which reads: Expenses of J. D. Beardsley to New York, $100.00; amount paid John A. Richardson's two trips to Washington, $20.00; amount paid Calhoun, expenses for canvassing, $50.00. Just at the time that this voucher was made the La. negotiations had been carried on in the name of the A. & L. R'y Co. and a subsidy had been voted to this company by the citizens of Claiborne parish, in La. At about this time in a conversation with J. D. Beardsley I called his attention to this fact and discussed with him the question as to how he was going to deprive me of any participation in the La. road while he was carrying on these negotiations in the name of the A. & L. R'y Co., in which the court had decreed me an interest. Following this conversation I noticed this voucher, and that J. D. Beardsley or some one had erased the items referring to the La. road and written in pencil across the voucher, "All

447 void but first item." I inferred from this that from this time forward he conceived the idea of charging these expenses to his own account in order to deprive me of having any claim on account of my interests in the A. & L. R'y Co. Subsequently all these negotiations fell through and were abandoned. Afterwards this second voucher, No. 1301, of date March 22nd, '87, was made and these items were again charged to the A. & L. R'y Co.

Q. You say that the item of $277, of date M'ch 30, '87, was money paid J. D. Beardsley on account of the old material of the Washington and Hope R'y Co., the whole of which had been passed upon and fully determined by this court upon the hearing of the original bill herein. Did J. D. Beardsley furnish the material charged for in this voucher to the A. & L. R'y Co.?

A. No, sir; he did not.

Q. Do you know what the material was?

A. I do.

448 Q. Did you know that there was an arrangement between the merchants of what is known as New Nashville and the A. & L. R'y Co., by which the R'y Co. was to deliver salt at Nash-

ville free of any freight charges over its road, provided said merchants would sell the salt at $1.50 per barrel there; that this arrangement was made with the view to inducing trade to Nashville as a leader, and that the salt was handled in the name of J. D. Beardsley to avoid confusion on the accounts?

A. No, sir; if such arrangements were made I knew nothing about it. I had nothing to do with it. I speak in reference to the salt I have testified to in my examination-in-chief.

Q. Was any such arrangement as this made in reference to the handling of any salt, so far as you know?

A. There was an arrangement of some kind made in the fall of '84, about which I was not consulted and in making of
449 which I did not have any voice, as it was all consum-ated by J. D. Beardsley before I knew anything about it. As a subordinate officer of the road at that time I carried out his instructions in regard to these transactions, but the accounts connected with these transactions was kept in the name of the A. & La. R'y Co., and it furnished the money to pay for the salt when it was bought, and the proceeds of the salt when sold was turned into its treasury.

Q. Did this arrangement extend over the year 1885?

A. My recollection is that the arrangement was to extend over the year 1884 and the early part of 1885.

Q. Under what arrangement was salt handled during the year 1886?

A. I think in about the same way, as far as I can remember.

Q. Do you remember whether the arrangement for '85 and '86 was made by J. D. Beardsley?

450 A. It was made by J. D. Beardsley. After it was first made that year there was some misunderstanding or some dissatisfaction with the merchants in the new town either as to the price or as to the manner of handling the salt—I cannot be sure which—and there was a meeting called. I think that J. D. Beardsley instructed me to appoint the time when he would meet these merchants at Nashville, which he did, and the meeting was held. I was at that meeting, and that is the only time, in my recollection, that I was present in any way. I do not think that I was consulted at that time; the discussion was entirely between him and the merchants, and it is the only time that I remember that the matter was discussed in my presence.

Q. Do you remember whether you agreed with the arrangement at that time or not?

451 A. I do not think that I took any part in the meeting as between J. D. Beardsley and myself. I always opposed any methods as discriminating between shippers.

Q. In regard to the net earnings of the A. & L. R'y Co., as referred to in the first questions upon this examination, what do you mean by the net earnings?

A. I mean the amount as shown by the company's books as net earnings. My figures as given are taken from the monthly reports

of the auditor. My understanding is that the net earnings are the remainder after deducting all legitimate operating expenses.

Q. Do the books of the company show the disposition of $65,000 of the net earnings mentioned in your examination-in-chief?

A. Yes, sir; they do.

Re-examined:

Q. Since your cross-examination yesterday have you refreshed your memory in regard to any of the facts upon which you
452 were cross-examined? If so, state your present (*present*) recollections in regard to such facts and any explanations you see proper to make in regard thereto.

A. In my cross-examination in answer to the question in relation to voucher No. 891 for $114, J. D. Beardsley's expenses to New York, I said, "Not definitely. My understanding was that he was endeavoring to raise money from parties in New York." After thinking over the matter I now remember that J. D. Beardsley went to New York on that occasion to meet Mr. D. E. Garrison, of St. Louis, Mo., and to assist or co-operate with him in endeavoring to raise money with which to extend the Ark. & La. R'y. Just previous to this trip young Mr. Garrison—either the son or nephew of Mr. D. E. Garrison—came to Washington and made an inspection of the road and property of the Ark. & La. R'y Co. with a view of making a report upon which Mr. D. E. Garrison could rely in representing the property to capitalists in New York for the pur-
453 pose of securing money for its extension. I interviewed young Mr. Garrison, at Washington, Ark., at that time, and notified him of my interest in the property and of my intention of bringing this suit, and cautioned him against dealing with J. D. Beardsley without due regard for my rights.

In answer to the question in relation to the item of $100, of date Nov. 13th, 1886, for payment of J. D. Beardsley's expenses to New York on his personal business, I stated the facts as they then occurred to me, but upon reflection I am able to make a more definite answer to that question. I now remember that about July 20th, '86, and immediately after the trial of this cause J. D. Beardsley went with his family on a pleasure trip to Canada, and was absent from Arkansas continuously until about Sept. 12th, '86, about which time he came to Washington and remained about a week or ten days, when he again returned to his family in Canada,
454 and did not return to Arkansas until some time in Nov. of '86. Just after his return in Sept. this voucher for $100, which bears No. 1103, dated Sept. 13th, '86, was made, and this amount was charged up to the Ark. & La. R'y Co. on the treas. book under date of Nov. 13th, '86. This voucher was to cover the expenses of the trip East in July and return in Sept.

In my answer to the question about the item of $318.25, for expenses of J. D. Beardsley to New York and elsewhere, I can now state that that voucher, like the one last referred to, was made after his second return from Canada in Nov., and covered his trip east in Sept. and return in Nov.

My recollection is very clear about these matters from the fact that I was in New York about Nov. 1st, 1886, and met and talked with J. D. Beardsley there on his return from his Canada trip. I also met him in Washington, Arkansas, during his short stay
455 there in September, when he returned from Canada the first time, and had an interview with him on that occasion.

PAUL F. BEARDSLEY.

Endorsed: Filed January 4, 1889. Ralph L. Goodrich, clerk.

Which evidence for complainant on supplemental bill is as follows:

OFFICE ARKANSAS & LOUISIANA R'Y CO.,
WASHINGTON, *March* 26, 1887.

On this day the board of directors of the Arkansas & Louisiana R'w'y Co. met at office of the company pursuant to a call of the president.

Present: Directors W. H. Caruth, J. D. Conway, H. B. Holman, R. B. Williams, and H. H. Wheless.

The meeting of directors called by the president for the purpose of taking action in regard to issuing the balance of the stock
456 on the 25.6 miles of constructed road, as required by the decree of the U. S. circuit court of the eastern district of Arkansas in the case of P. F. Beardsley *vs.* J. D. Beardsley and the Arkansas & Louisiana R'w'y Co., and also for the purpose of taking up the accounts of J. D. Beardsley against the Arkansas & Louisiana R'w'y Co. and its predecessors.

On motion of J. D. Conway, it was unanimously resolved that, in obedience to the decree of the U. S. circuit court of the eastern district of Arkansas, the unissued stock on the 25.6 miles of road now constructed be issued to J. D. Beardsley, and the president and secretary are hereby instructed to issue him said stock, which will make the total stock issued on the 25.6 miles 5,120 shares, $100 each, and no more.

On motion of H. B. Holman, it was unanimously resolved that the accounts of J. D. Beardsley against the Arkansas & Louisiana R'w'y Co. be taken up and adjusted in accordance with the terms and understanding had at the ratification of the contract
457 cancelling the construction contract and the transfer of the road to the company under that contract in December, 1886.

J. D. Beardsley then presented an account for moneys collected on individual obligations which were his property, and which obligations were collected and used by the Washington & Hope R'w'y Co., by the Arkansas & Indian Territory Co., and by the lessees and constructors, the account amounting to, principal and interest, $9,696.67; of which sum $6,499.13 was collected and used by the Washington & Hope R'w'y Co. as follows:

Dec.	18, 1880.	Thos. H. Sims	$350 00
"	" "	W. P. Hart	350 00
"	29, "	A. B. Williams	250 00
"	31st, "	E. D. Jett	125 00
Jan'y	4, 1881.	A. H. Carrigan	125 00
"	5, "	W. H. Caruth	500 00
"	12, "	C. M. Conway	62 50
"	" "	H. B. Holman	100 00
"	13, "	A. N. Carrigan	75 00
"	" "	Jno. Justus	350 00
"	15th, "	R. C. Phelps	225 00
"	22, "	J. R. May	25 00
"	" "	R. B. Williams	125 00

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Feb'y	4th, 1881.	W. N. Johnson	25 00
"	5, "	W. J. Ferguson	100 00
"	18, "	H. Lazerus	125 00
"	" "	C. Jagersfield	50 00
"	19, "	S. E. Benson	25 00
"	21st, "	A. J. Hawthorne	25 00
M'ch	22, "	J. J. Thomas	112 50
"	26, "	W. D. Green	100 00
Sept.	22, "	J. K. Jones	112 50
"	" "	J. D. Conway	68 75
"	" "	J. W. Williams	125 00
Dec.	23, "	Ode Stuart	200 00
Jan'y	16, 1882.	Jas. K. Jones	50 00
"	17, "	W. H. Carruth	500 00
"	" "	Thos. H. Simms	350 00
Mar.	2, "	Jas. K. Jones	37 50
"	4th, "	A. J. Hawthorn	25 00
"	11th, "	W. N. Johnson	25 00
Jan.	13th, "	Jas. K. Jones	50 00
		Interest to April 1st, 1887	1,730 38
	Total		$6,499 13

$2,356.51 was collected and used by the Arkansas & Indian Territory R'w'y Co. as follows:

Mar.	22nd, 1882.	H. J. Trimble	25 00
Jan.	13, 1883.	W. P. Hart	378 00
"	14th, "	C. M. Conway	62 50
"	6th, "	A. H. Carrigan	132 65

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Jan'y	9th, 1883.	E. D. Jett	131 25
"	16, "	T. C. Smith	110 00
"	17, "	Gray & Steve Carrigan	132 85
"	18th, "	H. B. Holman	110 00
"	19, "	W. Rowton	61 90

Feb'y	3rd, 1883.	C. Jagersfield	55 00
Mar.	8th, "	Geo. J. Smith	54 75
"	14, "	W. D. Green	100 00
"	27, "	J. R. May	28 00
Apr.	19th, "	Jno. Justiss	361 10
"	27, "	W. J. Ferguson	50 00
May	7, "	Do. do.	50 00
		Interest to April 1st, 1887	513 51
		Total	$2,356 51

$841.03 was collected and used by lessees and constructors as follows:

Mar.	18th, 1884.	Carrigan Bros	$141 60
June	28th, "	H. Wright	104 95
May	15th, "	A. N. Carrigan	20 00
Octo.	8th, 1885.	H. Lazerus	174 63
"	" "	H. Wright	151 15
Feb'y	28, 1886.	J. J. Holman	138 55
		Interest to April 1st, 1887	90 15
		Total	$841 03

The auditor and treasurer stated that their books showed
460 the collection of the notes as stated, and that the proceeds were used by the respective companies.

On motion of H. B. Holman, it was unanimously resolved that—

Whereas it is within the knowledge of the directory that these notes were the personal property of J. D. Beardsley, having been turned over to him by the Washington & Hope R'w'y Co. as a part of the consideration for building that railroad in 1880; and whereas the Arkansas & Louisiana R'w'y Co. is legally liable for all the unsettled liability of the Washington & Hope R'w'y Co. and the Arkansas and Indian Territory Co., it is ordered that this account be allowed so far as the notes collected and used by the Washington & Hope and Arkansas & Indian Territory R'w'y Co. are concerned; and whereas by a contract ratified in December, 1886, J. D. Beardsley turned over to this company the possession of the road and property, together with all funds on hand, under an under-
461 standing that all proper claims against the constructors and lessee should be considered and allowed by the company:

Therefore resolved, That that part of the account, amounting, in principal and interest, to $841.03, collected and used in the construction of this road, be allowed and the auditor is hereby instructed to make his voucher for the amount of the account, to wit, $9,696.69, and the president is instructed to approve the same, and the treasurer is directed to pay the same upon presentation out of any funds in his hands belonging to this company.

The following accounts were then taken up: An account of J. D. Beardsley against the Washington & Hope R'w'y Co. for balance of salary, amounting to $2,500.00, with interest on the same from Sept.

18, 1882; an account of J. D. Beardsley against the Arkansas & Indian Territory R'w'y Co. for a balance of salary, $600, with interest from Dec. 1st, 1883; an account of J. D. Beardsley for
462 material furnished the Washington & Hope R'w'y Co., amounting to, with interest, $172.50; and an account of J. D. Beardsley against the Arkansas & Louisiana R'w'y Co. for balance due him since August, 1886, to April 1st, 1887, amounting to $2,400.00.

On motion of J. D. Conway, unanimously resolved that these accounts be allowed and paid, and that the auditor is hereby instructed to make his voucher for them and the president be instructed to approve the voucher, and the treasurer is hereby instructed to pay the same on presentation out of any funds of this company in his hands.

J. D. Beardsley advised the directory that he had a claim against the company for whatever the va*u*le of the land grant made by the State of Arkansas to the Washington & Hope R'w'y Co. might be; that the Washington & Hope R'w'y Co. had contracted with him to convey him said land grant, amounting to from 20,000 to 25,000 acres of land, as part payment for the construction of the
463 Washington and Hope R'w'y Co., and that though he had constructed said road according to contract, and it had been accepted by the directory of the R'w'y Co., they had failed to convey him the said land, but had thereafter disposed of it to other parties.

On motion of H. B. Holman, it was unanimously resolved that the facts in regard to the Washington and Hope R'w'y Co. land grant are within the knowledge of the members of the directory and are as stated; that the claim is a legal claim, and this company will take it up and settle it on an equitable basis.

On motion of R. B. Williams, the meeting adjourned.

(Signed) W. H. CARUTH, *President.*

(Signed) —— ——, *Secretary.*

WASHINGTON, ARK., *Oct'r* 22, 1887.

On this day the board of directors of the Arkansas & Louisiana R'w'y Co. met at the office of the company, pursuant to the
464 call of the president.

Present: W. H. Carruth, president and treasurer; R. B. Williams, secretary; H. H. Wheless, assistant secretary, and Directors Thos. H. Sims, A. B. Williams, H. B. Holman, J. D. Conway, J. J. Thomas, and Jno. C. Ware.

The president stated that this meeting had been called for the purpose of considering the policy to be pursued by the company in regard to the lands and other property of the company and for the consideration of any other matters of importance that might be brought before the board.

It was stated by the president that in the decree made by the Federal court in August, 1886, in the case of Paul F. Beardsley *vs.* J. D. Beardsley and The Arkansas & Louisiana R'w'y certain lands

held in the name of J. D. Beardsley were declared to be the property of this company, and the said J. D. Beardsley was ordered to convey the said lands to this company and was restrained
465 from selling or disposing of said lands for his own use or benefit.

The president further called the attention of the directors to the fact that an appeal had been taken to the Supreme Court of the United States and the decree had been superseded, but that it had been considered for the best interest of all parties to conduct and transact the business of the company in all respects in such a way that if the decree should be affirmed by the Supreme Court of the United States no confusion would arise and the interest of all parties would be protected pending the final decision.

That with this object in view the construction contract under which the road was in possession of J. D. Beardsley had been cancelled by an agreement with J. D. Beardsley, which agreement was submitted and approved by the directory. Under this agreement the company had taken possession of its road and property and employed J. D. Beardsley as general manager from date of
466 said decree.

The president further stated that J. D. Beardsley was disposing of the lands in question with the consent and approval of the president and with the understanding that all moneys accruing from sales or rents or in any other way from the lands in question or from any other property of the company under J. D. Beardsley's management were going directly into the treasury of the company and being devoted to its use. After this report of the president, Mr. H. H. Wheless, auditor of the company, was requested to make a report in regard to the disposition of the funds arising from the sale or rental of the lands and of any other property of the company under the management of J. D. Beardsley.

The auditor reported that the lands were in the market and were being offered for sale and were being sold; that all money received for or on account of sales or rental of lands, and also of all
467 other property, was turned directly into the treasury of the company as fast as collected, and that it was used and treated exactly as other revenues of the company.

On motion of Director Thos. H. Simms, it was resolved unanimously that the directory, having heard the report of the president and auditor in regard to the manner of handling the lands and other property of this company, approve the same and direct that the policy heretofore adopted be continued; also this company will ratify and confirm all sales heretofore made by J. D. Beardsley, the proceeds of which have been or are to be when collected paid into the treasury of the company; also that J. D. Beardsley, as general manager, &c., be authorized to sell and dispose of these lands to best advantage, turning into the treasury of the company all funds resulting in any way from them; that the auditor
468 be requested to take up all sales and proceeds of said lands on his books, and in order that these transactions may be

easily traced in future that he keep these accounts separate and apart from the other accounts of the company.

Also that if the decree of the Federal court of August, 1886, be reversed the company will account for the proceeds of these lands to whoever may be entitled to the same, and that the president and secretary of this company are hereby instructed and empowered to execute proper deeds for all lands belonging to or in which the company may have an interest when the same are sold, provided the proceeds of such sales are paid into the treasury of the company, but not otherwise.

On motion of Director Holman, it was resolved, That whereas Paul F. Beardsley has complained and alleged in a suit recently instituted in the circuit court of this county that he is a
469 stockholder in the company, and that he as a stockholder is obliged to bring suit himself against J. D. Beardsley because he cannot get the Arkansas and Louisiana R'w'y Co. to institute proceedings in its own behalf; and whereas the decree of the United States circuit court of the eastern district of Arkansas in the case of Paul F. Beardsley *vs.* J. D. Beardsley and The Arkansas and Louisiana R'w'y has been superseaded and pending the final decision in the case, this directory does not know whether the said Paul F. Beardsley is or is not a stockholder in this company:

Be it therefore resolved, That, without recognizing or denying the rights and without prejudice in any way to the rights of any of the parties to this said suit, that if the said Paul F. Beardsley is of the opinion that J. D. Beardsley or any other party is in possession of the funds or any property of this company for which he or they should make restitution, or that J. D. Beardsley or any other
470 party is indebted to this company in such a way that his interests as a stockholder, if he has any, are endangered, this company will institute such suit as he may desire or will permit him to prosecute such suit or suits in the name of this company by his own attorneys, provided his attorneys advise the bringing of the suits. Director J. D. Conway voted against the adoption of the last resolution and asked that his vote be so recorded, which is done.

On motion of Director Thomas H. Simms, it was resolved that the secretary of the company be instructed to furnish the said P. F. Beardsley with a copy of this resolution.

On motion of Director R. B. Williams, the following resolution was unanimously adopted:

Whereas the members of this board were assailed and their motives impugned and denounced in a cause recently heard and determined adversely to the plaintiff in the Hempstead circuit
471 court in chancery, in which Paul F. Beardsley was plaintiff and J. D. Beardsley and others were defendants, for their action in allowing certain claims made against the Arkansas & Louisiana Railway Co. by J. D. Beardsley, at a meeting of the board had on the 26th day of March, 1887; and whereas the board desires to set itself right in the premises: Therefore be it resolved, That the

reasons hereafter assigned are the sole and only reasons which moved this board to act as it did in allowing said claims.

In the matter of the bonus notes, as they are called, the Washington & Hope R'w'y Co., by its contract of September 10, 1879, obligated itself to procure and give to J. D. Beardsley the notes of solvent citizens of the value of $10,000.00 as a part of the consideration for building and operating the Washington & Hope R'w'y, but instead of so doing it caused said notes to be executed to the company, collected a large part of them, and paid the proceeds
472 directly into its own treasury. The Arkansas and Indian Territory R'w'y collected and appropriated some of said notes, as did also the Arkansas & Louisiana R'y Co.

In the several sales by which the Arkansas & Louisiana R'w'y Co. acquired the property of the Washington & Hope R'y Co. the Arkansas & Louisiana R'y Co. became by its stipulations and agreements liable for all of the debts of every character of the Washington & Hope and Arkansas & Indian Territory R'w'y Companies.

These notes nor the proceeds thereof had ever been paid to J. D. Beardsley, as was agreed in the contract of September 10th, 1879, and the board regarded the claim as an honest and just debt, and so allowed it.

As to the $2,500 salary allowed J. D. Beardsley, the records show that he was working for the Washington & Hope R'w'y Co. for a salary of $2,000 per annum, and it is within the knowl-
473 edge of members of the board that he had only drawn $1,500 of his salary for two years, leaving due him the sum of $2,500.00.

The Arkansas & Louisiana R'y Co. having become responsible for the debts of the Washington & Hope R'w'y Co., we regarded that as a just debt and one that should be paid.

As to the $2,400.00 extra salary allowed, J. D. Beardsley stated to several members of the board that he had had an offer of $6,000.00 per annum to take the management of a railroad in the East, and if he remained here in charge of this road and its affairs he should expect the same salary from that time forward. We then thought, and now think, that his place could not have been supplied, and that it was to the interest of the road to retain him at that salary, and while the matter was never discussed in a meeting of the board and no contract was made with him for that salary, yet it was understood by those directors to whom he spoke of the matter
474 that he was to be allowed a salary at that rate, and, when he presented his account for it, it was accordingly allowed.

As to the claim of $172.50, it is within the knowledge of members of the board that J. D. Beardsley had furnished to the Washington & Hope R'y Co. a desk and other material which was sold and the proceeds thereof turned into the treasury of the company, and he had never been paid therefor, and this was regarded as a just claim against this company and so allowed.

In the matter of the claim for the land grant, as it is called, the Washington & Hope R'w'y Co. agreed with J. D. Beardsley, though

the agreement was not incorporated in the written contract with him, that upon the completion of the road in the manner and within the time indicated in the act of the General Assembly approved March 5, 1879, the company would convey to him all the lands conveyed to the said company under said act; but
475 instead of doing so the Washington & Hope R'w'y Co. conveyed these lands to the Arkansas and Indian Territory R'y Co., and that company in turn to the Arkansas & Louisiana R'w'y Co., and the Arkansas & Louisiana R'w'y Co. conveyed the lands to J. D. Beardsley and associates in the construction contract of May 22d, 1883, as a part of the consideration for building the Arkansas & Louisiana R'w'y, so that the same were never in fact conveyed to J. D. Beardsley under the original agreement.

This the board regarded as a personal contract with J. D. Beardsley, and when it agreed to take up his claim therefor and adjust it upon an equitable basis it felt that it was simply agreeing to allow a just claim when the amount thereof could be arrived at. This company had assumed all the debts of the Washington & Hope R'w'y Co. and the Ark. & Ind. Ter. R'y Co., and this was regarded as one of the debts of the Washington & Hope
476 R'y Co. While the records show that the sale of the Washington & Hope R'y to the Arkansas and Indian Territory R'y Co. and the sale of the latter to the Arkansas & Louisiana R'w'y Co. all occurred at once, as a matter of fact the Arkansas & Indian Territory R'w'y Co. was in existence for some months and work was begun and carried on thereunder before it was agreed to organize the Arkansas and Louisiana R'y Co., and the salary allowed to J. D. Beardsley was for work actually done by him for that company and the payment thereof assumed by the Arkansas & Louisiana R'y Co. The board was then and is now of the opinion that the matter of account between J. D. & P. F. Beardsley were settled by the decree of the Federal court, but that the accounts between J. D. Beardsley and the Arkansas & Louisiana R'w'y Co., as successor of the Washington & Hope and Arkansas & Indian Territory R'w'y Companies, were not adjusted by that decree, and that they
477 were acting in matters which they were authorized to deal with, and they here now deny that they were in any manner acting intentionally in contempt of the orders and decrees of said court.

So long as it was understood by both J. D. Beardsley and this board that J. D. Beardsley was the sole owner of the road and all of its properties except the stock held by the directors it was never thought necessary to pass upon or allow these claims; but after the decree of the Federal court declaring that Paul F. Beardsley had an undivided one-third ($\frac{1}{3}$) interest in the stock and property of the company, then it was thought but just and right that these claims, which were regarded as just, should be allowed and paid.

On motion of Director J. D. Conway, the board adjourned subject to the call of the president.

(Signed) —— ——, *President.*

(Signed) —— ——, *Secretary.*

478 It is agreed that the above and foregoing may be used in evidence by the complainant upon the hearing of the cause now pending in the circuit court of the United States for the eastern district of Arkansas, wherein Paul F. Beardsley is complainant and John D. Beardsley, Ark. & La. R'y Co., St. L., I. M. & S. R'y Co., and Jay Gould are defendants, subject to objections for competency and relevency only.

Nov. 23, 1888.

JONES & MARTIN,
For P. F Beardsley.
DODGE & JOHNSON,
Att'ys for St. L., I. M. & S. R'y & Jay Gould.
JNO. M. MOORE &
A. B. & R. B. WILLIAMS,
For J. D. B.

Filed Jan. 4, 1889.

RALPH L. GOODRICH, *Clerk.*

479 On January 17, 1889, as follows:

Comes the complainant, by Jones and Martin, Esqrs., his solicitors, and comes the defendant John D. Beardsley, by J. M. Moore and R. B. Williams, Esqrs., his solicitors, and file herein their agreement to read affidavits in evidence.

Which agreement is as follows:

We agree that the affidavit- made by W. H. Carruth, A. B. Williams, H. B. Holman, J. D. Conway, and R. B. Williams before John E. Williams, notary public, on the 8th day of November, 1887, and the affidavit made by H. H. Wheless before J. M. Simms, notary public, on the 10th day of November, 1887, and the affidavit made by W. H. Carruth before Ralph L. Goodrich, U. S. commissioner, on the 10th day of November, 1887, with the cross-examination and re-examination of said Carruth annexed to his said affidavit,
480 may be read upon the hearing of this cause as evidence produced upon the part of the defendant John D. Beardsly, with this explanation of said affidavits: that neither of said affiants now have any official connection whatever with the Arkansas and Louisiana Railway Company, the same having terminated since the making of said affidavits. Said affidavits may be so used as evidence, subject to objections for competency & relevancy only.

This December 19th, 1888.

JONES & MARTIN,
For Complainant.
J. M. MOORE AND
R. B. WILLIAMS,
For Defendant John D. Beardsly.

And on March 23, 1889, as follows:

Comes the complainant, by Dan. W. Jones and Thomas B. Martin, his solicitors, and the defendant John D. Beardsley, by John
481 M. Moore, his solicitor, and the other defendants, by Dodge & Johnson, their solicitors, and, upon motion of complainant,

it is by the court ordered that the complainant have leave to withdraw his several replications to the said defendants' several answers to the supplemental bill herein and to file an amendment to said supplemental bill; and thereupon such amendment is filed; to which the said defendants except.

Which amendment to supplemental bill is as follows:

To the judges of the circuit court of the United States for the eastern district of Arkansas:

By leave of the court first had and obtained, your orator charges that since the filing of the answer and exhibits thereto of the defendant Jay Gould it has come to your orator's knowledge, and he now charges it to be true, that, on the 7th day of March,
482 1887, the said defendants Jay Gould and John D. Beardsly entered into the agreement which is set forth at length in Exhibit "A" to the said answer of the said Jay Gould, in and by which said defendants contracted, among other things, that the said John D. Beardsly should sell and the said Jay Gould should buy fifty-one per cent of the stock and bonds of the defendant Arkansas and Louisiana Railway Company for the consideration of fifty-one thousand dollars, but that the lands of said railway company, including the lands and hotel in Nashville, should be reserved to the said John D. Beardsley, and in the disposition of the proceeds of said lands the said stock should not participate; that when the said debt to the defendant St. Louis, Iron Mountain and Southern Railway Company shall have been paid by the defendant Arkansas and Louisiana Railway Company, or if the said Jay
483 Gould shall himself have paid fifty-one per centum thereof, said agreement, on being exhibited to R. S. Hayes, trustee, or the Mercantile Trust Company, shall, without further action or order, entitle the said Gould to demand and receive fifty-one per centum of the two hundred and forty (240) bonds of the Arkansas and Louisiana Railway Company, free of any claim of your orator or other person, and the said John D. Beardsley forty-nine per centum thereof, if said last-named company shall have paid said debt, or if the said John D. Beardsley shall have paid forty-nine per centum thereof, and that upon ten days' request in writing by said Gould the said John D. Beardsley would procure a ratification of said contract and all of its provisions by the Arkansas and Louisiana Railway Company. Your orator, for greater certainty, refers to said Exhibit "A" to said Jay Gould's answer and prays that the same may be taken and considered as part of this bill, the
484 same as if herein fully and at large set forth and pleaded.

And your orator further charges that by Exhibit "B" to said Jay Gould's said answer the fact has come to your orator's knowledge and he now charges it to be true that the said Jay Gould and John D. Beardsley afterwards, to wit, on the 14th day of July, 1887, entered into another contract, which is set forth at large in said Exhibit B, in and by which, after referring to said agreement of March 7, 1887, it is by them agreed, in words and figures following, that—

"Whereas certain of said conditions on the part of said Beardsley remain partially unperformed, but it is the desire and purpose of the parties to complete the purchase and sale of securities provided in said agreement by the delivery of said securities & the payment of said consideration, upon the — Gould being fully secured with respect to such obligations of said Beardsley under said agreement as remain in part to be performed:

485 "Now, in consideration of the premises and of the sum of one dollar by said Gould to said Beardsley in hand paid, the receipt of which is hereby acknowledged, said Beardsley agrees as follows:

"In order to secure and protect the Arkansas and Louisiana Railway Company and said Gould, as owner of said 51 per cent. of its stock, against any and all debts of said company in existence prior to April 1st, 1887, and against any claims or demands of any description that may affect the title of said company to a clear and undisputed right of way of 100 feet in width (except as to width of right of way through town of Hope) for the entire length of its road as at present constructed, and also against any claim of Vinton Alderman arising out of the sale to said Beardsley of one-half of the stock of the Washington and Hope Railroad Company, said Beardsley will immediately, upon the execution

486 of this agreement, endorse & deliver to A. L. Hopkins, in pledge for the purpose of such protection and security, the remaining 49 per cent. of the stock of said Arkansas and Louisiana Railway Company, and said Beardsley hereby agrees that all his right, title, and interest in and to the 49 per cent. of 240 first-mortgage bonds of said railway company now held by the St. Louis, Iron Mountain and Southern Railway Company or R. S. Hayes as security for the debt of $109,609.57 or thereabouts, with interest, owing to it by said Beardsley, shall be held by said St. Louis, Iron Mountain Company in pledge as additional such security and protection to said Arkansas and Louisiana Railway Company and said Gould, and that, as further such security and protection, said Beardsley agrees and directs that all his right, title, and interest in

487 and to the 49 per cent. of the 144 earned, but unissued, bonds of the Arkansas Railway Company (remaining after deducting the 51 per cent. of said bonds sold to said Gould upon the conditions of said agreement of March 7, 1887) *and* shall be held by said company upon a like trust and under like pledge, and said Beardsley further agrees that his authority and direction in this behalf to the said Iron Mountain Company or R. S. Hayes and to the said Arkansas and Louisiana Railway Company shall be complete upon the exhibition thereof to said companies, respectively, and to said Hayes.

"In order to carry out the intent of said agreement of March 7, 1887, respecting the transfer to said Gould of the control of the said Arkansas & Louisiana Railway Company said Beardsley stipulates that within ten days after request made by said Gould he will cause the resignations of the present members of the board

488 of directors to be duly made and affected and the nominees of said Gould to be duly elected directors in their place and stead.

"Said Gould agrees that upon the acquisition of a complete legal title to the entire right of way of the said Arkansas and Louisiana Railway Company and upon delivery to said Gould of the receipt in full of said Vinton Alderman to the said railway company, or his statement that he had no claim or demand against said company, said Gould will release the pledges herein provided and cause said trusts in his behalf and in behalf of the Arkansas and Louisiana Railway Company to terminated.

"In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

"(Signed) JOHN D. BEARDSLEY. [SEAL.]
JAY GOULD. [SEAL.]"

Your orator, for greater certainty, refers to said Exhibit
489 "B" to say Jay Gould's answer and prays that it may be taken and considered as part of this bill.

And your orator further charges that the said Jay Gould, at the time of making each of said contracts with the said John D. Beardsley, was in full knowledge of the facts of the litigation between your orator and the said John D. Beardsley and the said Arkansas and Louisiana Railway Company and of the findings, opinion, and decree of this court, wherein your orator was decreed to be the owner of one-third of all the stock and bonds of said Arkansas and Louisiana Railway Company and wherein said company and not the said John D. Beardsley was decreed to be the owner of the lands, including the lands and hotel at Nashville mentioned in said Exhibit "A" as being reserved to the said John D. Beardsley, and that he was also in full knowledge of the fact that by the decree of this court the said John D. Beardsley was
490 restrained and enjoined from disposing of or in any manner encumbering the title to any of said stock and bonds so decreed to be your orator's property, or any of said lands and other property so decreed to be the property of said Arkansas and Louisiana Railway Company.

And your orator further charges that said agreements between said Beardsley and Gould are in open disregard and contempt of said decree of this court; that the board of directors of the said Arkansas and Louisiana Railway Company are those nominated and elected by the said Gould, acting alone in his interest, and will, if permitted to control said railway, carry out the terms and conditions of said agreements between said Gould and Beardsley, and thereby utterly destroy your orator's interest therein, and
491 that unless restrained by this court the said Gould will hold and control your orator's entire interest in the stock and bonds of said railway company and in other respects carry out and consummate the iniquitous contracts so made by him with the said John D. Beardsley, including the disposition of the lands and hotel belonging to said company.

Wherefore your orator prays, in addition to the prayer of his said supplemental bill, that the receiver heretofore appointed by the court to have the custody and control of said railway company & all of its property be retained & continued until your orator shall have full execution and satisfaction of the decree and judgment of this court in his favor; that the said defendants, Jay Gould, John D. Beardsley, Arkansas and Louisiana Railway Company, and the St. Louis, Iron Mountain and Southern Railway Company,
492 and each of them, and the attorneys and agents of each of them, be restrained and enjoined from carrying out any of the terms and conditions of said contracts and agreements made by the said Gould and Beardsley on the 7th of March, 1887, and 14th of July, 1887, which in any manner conflict with the interests of your orator or which in any manner conflict with the terms and provisions of the decree of this court heretofore rendered in this cause, and for such other and further relief as to your honors may seem equitable and just and the nature of the case may require.

DAN. W. JONES &
THOS. B. MARTIN,
For Complainant.

The complainant, Paul F. Beardsley, says that he believes the statements of the foregoing amendment are true.

PAUL F. BEARDSLEY.

Sworn to.

493 To his honor Henry C. Caldwell, judge:

Paul F. Beardsley, the complainant, prays that he may be permitted to withdraw his replications to the several separate answers of the said defendants, John D. Bea-dsley, Arkansas and Louisiana Railway Company, St. Louis, Iron Mountain and Southern Railway Company, and Jay Gould, and to file the foregoing amendment to his supplemental bill herein, and he solemnly swears that the same is not made for the purpose of vexation or delay.

PAUL F. BEARDSLEY.

Sworn to.

494 UNITED STATES OF AMERICA, }
Western Division of the Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the western division of the eastern district of Arkansas, begun and holden on Monday, the 8th day of April, anno Domini one thousand eight hundred and eighty-nine, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, and on April 16, 1889:

Comes the defendant Jay Gould, by Dodge and Johnson, Esqrs., his solicitors, and files herein his answer to amendment to the supplemental bill.

495 Which answer is as follows:

Comes the defendant Jay Gould and for answer to the amendment to the supplemental bill in this case filed March 21st, 1889, says—

That he admits the execution of the contracts referred to therein as Exhibits A & B to his answer heretofore filed.

He denies that said contracts were made in open disregard and contempt of the decrees of this court, or that it was his intention or that he has in any manner jeopardized, affected, or interfered with the interests of the said Paul F. Beardsley, complainant herein.

But, on the contrary, defendant says that the said contracts by the terms therein expressly contained protected & were made with a due regard to all of the interests of the said Paul F. Beards-
496 ley as heretofore adjudged or hereafter to be adjudged in this honorable court.

And this defendant says that he seeks now to recover no rights in this court which can in any manner interfere with or injure the interests of the said complainant herein.

Wherefore defendant prays to be dismissed, etc.

DODGE & JOHNSON,
Att'ys for Def't.

And on May 1, 1889, as follows:

Comes the complainant, by Dan. W. Jones and Thomas B. Martin, Esqs., his solicitors, and files herein his separate replication, to answer of St. Louis, Iron Mountain and Southern Railway Company to supplemental bill, answer of Jay Gould and John D. Beardsley to supplemental bill.

497 Which replications are as follows:

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer of the said Jay Gould, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is
498–500 and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

DAN. W. JONES &
THOS. B. MARTIN,
For Complainants.

The replications to the answers of John D. Beardsley and the St. Louis, Iron Mountain & Southern Railway Company to the supplemental bill are the same as the above replication.

501 And on July 25, 1889, as follows:

Ordered that the pleadings, with the exhibits and depositions and other proofs heretofore submitted to the court in this case, be referred to C. B. Moore, Esq., the master in chancery, and he is hereby directed to state the account as between the defendant John D. Beardsley and the Arkansas and Louisiana Railway Company since the rendition of the decree on the 20th day of August, 1886, in the case to which this is supplemental, and specially to
502 ascertain what sum or sums of money have been allowed or paid to the said John D. Beardsley by the board of directors of said railway company since that date that were adjudicated or allowed in and by said decree, or otherwise illegally or wrongfully allowed said defendant, and that said master make report herein touching said account on or before the 5th day of August, 1889.

503–'5 The report of the master is in words and figures following, to wit:

PAUL F. BEARDSLEY
v.
THE ARKANSAS AND LOUISIANA RAILWAY *et al.*

To Paul F. Beardsley, W. P. Hart, John D. Beardsley, the Arkansas and Louisiana Railway Company, the St. Louis, Iron
506 Mountain and Southern R'y Co., and Jay Gould:

Please take notice that in the above-entitled cause, in the United States circuit court, eastern district of Arkansas, in which by the decretal order of said court I was directed, as master in chancery, on the 25th of July, 1889, "to state the account as between the defendant John D. Beardsley and the Arks. & La. Railway Company since the rendition of the decree on the 20th day of August, 1886, in the case to which this is supplemental, and specially to ascertain what sum or sums of money have been allowed or paid to the said John D. Beardsley by the board of directors of said railway company since that date that were adjudicated or allowed in and by said decree or otherwise illegally or wrongfully allowed said defendant," I will, on Saturday, August 3rd, 1889, at 3 o'clock p. m., pass said account in my office, in Little Rock, Arkansas, when
507 and where you will attend and object to my findings if you see fit so to do.

C. B. MOORE,
Master in Chancery, U. S. Circuit Court.

Aug. 2d, 1889.

We acknowledge service of the within notice and waive our rights to appear at the time and place appointed therein for the passing of the account, &c., by the master, and reserve our right to file exceptions after the report of the master is filed.

PAUL F. BEARDSLEY,
By DAN. W. JONES &
T. B. MARTIN.
J. M. MOORE,
For J. D. Beardsley.
DODGE & JOHNSON,
Att'ys for Ark. & L. R'y Co. & Jay Gould.

In Chancery.

PAUL F. BEARDSLEY
vs.
THE ARKANSAS & LOUISIANA RAILWAY CO. *et al.* } 811.

Master's Report.

508 To Hon. Henry C. Caldwell, judge, &c.:

In pursuance of the decretal order of this court made in the above-entitled cause on the 25th day of July, 1889, by which I was directed "to state the account as between the defendant John D. Beardsley and the Arkansas and Louisiana Railway Company since the rendition of the decree, on the 20th day of August, 1886, in the case to which this is supplemental, and specially to ascertain what sum or sums of money have been allowed or paid to the said John D. Beardsley by the board of directors of said railway company since that date that were adjudicated or allowed in and by said decree or otherwise illegally or wrongfully allowed said defendant"—

I have the honor to report:

I have with care and painstaking read and studied the pleadings and evidence in the "supplemental" suit and have examined
509 every voucher and claim and have weighed the testimony relating to each one *pro* and *con*.

In addition to this, I have examined the papers, pleadings, evidence, orders, and decrees in the original suit, so far as they shed additional light on the matters required to be reported upon by me herein.

And I find, as the result of my investigations, as follows, to wit:

I have first examined the items contained in the paper of which the following and appended, marked Exhibit "A," is a copy, the original of which was filed June 3d, 1889. By the endorsement thereon I understand that this paper (or one of which it is a correct copy) was submitted to the court upon the submission of the original case, and, though not specifically mentioned in the opinion of the court and the final decree rendered therein, that the items therein contained were passed upon and, with the exception
510 of items numbered 1, 3, 4, 6, & 8, were disallowed and ignored by the court.

Since that time the vouchers and evidence show that all the items in this paper, except those above mentioned and item No. 7, have been allowed and paid to the defendant John D. Beardsley by order of the board of directors of the Arks. and La. Railway Co.

Some of the items in this paper, "A," have been increased in amount in the vouchers since the paper was first before the court by the addition of interest, &c., but the items are the same.

Item 2, $36.00, and item 5, $98.00 and $38.50; interest added in these 2 items, in all $172.50, was ordered paid by the board of directors on March 26, 1887, and was paid to J. D. Beardsley on voucher dated March 20th, 1887, voucher No. 1322½ (attached to J. D. Vanderford's deposition).

Item 9, increased by other articles and interest from $107.00
511 to $277.00, does not appear to have been ordered paid by the board of directors, but was paid to J. D. Beardsley on voucher No. 1300 on March 22, 1887.

Item 10, $6,900, increased to $9,696.67, "proceeds of bonus bonds," was ordered paid by the board of directors March 26,1887, and was paid on voucher No. 1323½ to J. D. Beardsley March 20th, 1887.

The history of these bonus notes is well known to the court and need not be repeated here.

Though originally intended as a "bonus" for J. D. Beardsley, perhaps they never became his private property, but went into the funds used for building the road and became a part of the property of the company as much as the iron rails on the road, and John D. Beardsley got his proportionate share of their value as owner of stock, &c., in the road, and to pay him back the value of these notes was simply paying him a second time for the same
512 thing, and the same remarks in effect will apply to each of the other items above mentioned for which he has received payment.

$2,500.00, item 11, for "back salary of J. D. B.," increased by $680 to $3,180.00, interest was allowed and ordered paid by the board of directors on March 26, 1887, and was paid on voucher No. 1324½, dated March 30th, 1887.

This, as I understand it, was before the court at the original hearing, and, with all other items in paper marked "A," passed upon and disallowed by the court.

All these items were embraced in the exceptions to Special Master Simms' report of the defendant J. D. Beardsley, filed Jan. 21st, 1887, and which exceptions were all overruled by the court in the decree rendered on February 24, 1887.

I therefore find, and so report, each and all of said payments to John D. Beardsley as illegally and wrongfully allowed and paid to him.

In voucher No. 1324½, above mentioned, is included the
513 sum of $600.00, and interest, $117.00, for three months' salary of J. D. Beardsley "on construction for the Arks. & Indian Territory R'd," and has, in my opinion, no sufficient evidence to support it as a claim against the company, and the item amounting, principal and interest, to $717.00 was illegally and wrongfully allowed and paid, and I so find and report it.

There was also allowed and ordered paid by the board of directors on the 26th of March, 1887, and paid to J. D. Beardsley on March 30th, 1887, on voucher 1325½, the sum of $2,400, as "allowance for services as general manager, &c., from August 16, 1886, to April 1st, 1887."

This allowance and payment for increase of salary (as well as the $717.00 above mentioned) was paid for a period of time when J. D. Beardsley was on a fixed salary, and cover the same periods, and to pay him these additional amounts seems to have been an afterthought both on the part of the board of directors and
514 J. D. Beardsley, and, finding no sufficient evidence to support

it, I conclude and so report it as illegally and wrongfully allowed and paid.

There is a large number of vouchers submitted for payment made to J. D. Beardsley, which are claimed in the supplemental bill as illegally paid, for expenses of trips to New York and other places. I have experienced more difficulty in arriving at a conclusion in regard to these vouchers than any other complained of.

The only evidence bearing directly on them (except as to one or two items mentioned in W. H. Carruth's deposition, p. 5) is that of complainant Paul F. Beardsley, on the one hand, and defendant John D. Beardsley, on the other, the former affirming and the latter denying that the expenses were for the personal expenses of Jno. D. Beardsley.

Under the order of reference to me, I do not take into
515 consideration any item paid to J. D. Beardsley prior to August 20th, 1886. In all these vouchers since that date the amounts are charged simply as "expenses to N. Y.," &c., with one exception. In voucher No. 1165 the charge is for "expenses to N. Y. and Philadelphia on r'r'd business."

In his deposition J. D. Beardsley simply denies the truth of P. F. Beardsley's statement that the expenses were not in the interest of the Ark. & La. R'y Co., and the general statement that he has not misappropriated the company's funds. (See p. 24, J. D. Beardsley's deposition.)

Now, as the whole matter was peculiarly within the knowledge of J. D. Beardsley, and as he could have explicitly explained on what particular business for the A. & L. R'y Co. he took these numerous trips, and as he has not seen fit to explain and as the vouchers do not state nor explain, I cannot regard them as proved to be legitimate charges against the A. & L. R'y Co., and,
516 with the exception of amount in voucher No. 1165, I report them as illegally and wrongfully paid.

I append to this report a tabulated statement of these charges, marked "B."

I also find that there was a narrow-*guage* engine, belonging to Ark. & La. Railway Co., that was sold by J. D. Beardsley, the proceeds of which do not appear to have been ever accounted for by him.

The evidence shows that it was sold and shipped, and draft for the price, $1,700.00, drawn about October 14th, 1887.

The freight charges appear to have been about $50.00, which, it seems, should be deducted from the price.

See deposition of G. D. Vanderford (p. 11), 5;

" deposition of T. Y. Williams (pp. 1 & 2) and copies of telegrams as exhibits to Williams' deposition.

J. D. Beardsley, in his deposition (p. 30), says that the engine was sold for $1,200 or $1,300, and that $100 was paid as
517 commissions for selling it, and that he does not know what disposition was made of the money.

Vanderford's testimony clearly shows that there was entry made on the books of the company as to the sale of the engine. The

draft having been made for $1,700.00 and no evidence to show that this amount was not paid except the vague statement of J. D. Beardsley, who seems to remember very little about it, I conclude that $1,700.00 less $50.00 for freight, say $1,650.00, is the proper amount to be charged against J. D. Beardsley for price of the engine, and I so find and report.

I find a number of matters alleged as charges in the bill of complaint for money improperly credited to J. D. Beardsley for expenses of witnesses, affidavits, &c., &c., in the suit of Paul F. Beardsley *vs.* J. D. Beardsley *et al.*, and, in my opinion, many of them were so improperly credited; but almost all of them antedate the 20th of August, 1886, to which date I am limited in the decretal
518 order under which this report is made. Those since that date are so small in amount that I shall make no account of them, as I understand from verbal instructions of the court that particulars as to minute matters are not expected nor desired herein.

Several matters also charged in the complainant's bill and about which testimony was taken are not sufficiently proven as improper credits to J. D. Beardsley and should not be debited to him; for example, the sum of $120.00 for interest on money loaned to A. & L. R'y Co. by Mrs. S. C. Beardsley. The testimony explains this to have been a legitimate credit; also a credit of $3,949.96 for steel rails furnished by J. D. Beardsley, voucher No. —, dated October 15, 1887, and credit of $984.00 for splices and bolts, voucher —, dated Oct. 17, 1887. Both of these sums were properly paid to him.

Several of the charges in the bill are utterly unsustained by
519 the proof, and I do not deem it necessary to mention them specifically.

There are a few of the vouchers that contain items of credits to J. D. Beardsley that are not clear to my mind and with little or no proof in regard to them, and in all such cases I have given "the benefit of the doubt" to J. D. Beardsley and decline to charge them against him.

The amounts that I have reported as improperly, illegally, and wrongfully paid to him appear to my mind to be clearly established, though it has been a difficult task to ascertain the exact truth and facts in the great mass of papers that have accumulated in the "original" and "supplemental" cases.

I append a recapitulated statement, marked "C," and add a column showing the amount of interest at 6 % to date on the various items, which recapitulation shows the total of the amounts
520 illegally and wrongfully paid:

Principal	$19,282 82
Interest on same	2,676 95
Total to Aug. 5, 1889	$21,959 77

It is with reluctance that I have been compelled to find and report so great an amount illegally and wrongfully allowed and paid

to John D. Beardsley, for it seems astonishing that both he and the board of directors of the railway company should have so entirely misconceived the orders, findings, and decrees of the court in the original cause. In explanation, and the only reasonable explanation that can be made, is the fact that, in the formation and conduct of this railway enterprise, in the first years of its existence, it was regarded and carried on more as a partnership in which J. D. Beardsley had the right to direct than as a railway corporation, and the directory, having really but a small interest in it as
521 owners of stock, naturally were inclined to leave the control and management almost exclusively to him, and he did thus manage and control its affairs up to the time of the appointment of the receiver, and, as the event has shown, to the detriment and ignoring of the rights of others, and for a long period of time, "in the teeth," so to speak, of the decrees and orders of the court by which these rights were settled and passed into *res adjudicatas*.

I gave notice to all the counsel representing the respective parties in this suit that I would pass these accounts in my office on the 3rd of August, 1889, when they might appear and object to my findings, if they saw fit to do so, before filing my report, and they have all waived their right so to appear, &c., as will be seen by written notice and endorsements thereon filed herewith.

All which is respectfully submitted.

C. B. MOORE,
Master in Chancery.

522 EXHIBIT A.

Statement of Indebtedness of Arkansas and Louisiana R'y Co. to Jno. D. Beardsley Filed with Judge Caldwell at Former Hearing.

Paul F. Beardsley Dr. to—

1.	One-third of old material of Washington & Hope R'y	4,732 50
2.	Standing desk bro't from Cairo	36 00
3.	Cash from B. and O. R'y	633 00
4.	Stave machine sold by Alderman	200 00
5.	Lot of material, consisting of trucks, wheels, chains, &c., sold to W. and H. R'y	98 00
6.	Goods returned to St. L. Hdw. & Cutlery Co	12 03
7.	Proceeds of a car of old iron	237 47
8.	Lounge for office	10 00
9.	Furniture for hotel	107 00
10.	Proceeds of bonus bonds	6,900 00
11.	Back salary of J. D. B.	2,500 00
		$15,466 00

☞Copy, except numbers on margin, which are made by me for convenience of reference.

C. B. MOORE, *Master, &c.*

523 EXHIBIT "B."

Statement of Travelling, &c., Expenses Paid to J. D. Beardsley.

1886.						
Sept. 13.	Expenses trip to	N. Y.,	voucher	No.	1103..	$100 00
" 30.	Do. do.	L. Rock,	"	"	1120..	6 00
Dec. 3.	Do. do.	"	"	"	1174..	6 50
" 24.	Do. do.	N. Y.,	"	"	1192..	185 50
1887.						
Feb'y 22.	Do. do.	" &c.,	"	"	1268..	50 00
Mar. 22.	Do. do.	N. Y.,	"	"	1303..	210 00
Apr-l 5.	Do. do.	St. L.,	"	"	1328..	35 00
June 20.	Do. do.	N. Y., &c.,	"	"	87..	375 00
July 23.	Do. do.	N. Y.,	"	"	128..	175 00
Nov. 12.	Do. do.	L. R.,	"	"	323..	21 65
Dec. 3.	Do. do.	St. L.,	"	"	372..	25 00
						$1,189 65

524 EXHIBIT C.

Recapitulated Statement.

When paid.			Amounts paid.	Interest at 6 % from date of payment to date of filing report, August 5, 1889.			
				Yrs.	*Mo.*	*Ds.*	*Am't.*
Mar. 20, '87	Pd. vou. No.	1322½	172 50	2	4	16	24 54
Mar. 22, '87	"	1300	277 00	2	4	14	39 43
March 20, '87	"	1323½	9,696 67	2	4	16	1,383 44
Mar. 20, '87	"	1324½	3,897 00	2	4	6	549 48
March 30, '87	"	1325½	2,400 00	2	4	6	338 40
Sept. 13, '86	"	1103	100 00	2	10	23	17 38
Sept. 30, '86	"	1120	6 00	2	10	6	1 03
Dec. 3, '86	"	1174	6 50	2	8	2	96
Dec. 24, '86	"	1192	185 50	2	7	12	29 05
Feb'y 22, '87	"	1268	50 00	2	5	14	7 37
Mar. 22, '87	"	1303	210 00	2	4	14	29 89
Ap'l 5, '87	"	1328	35 00	2	4	0	4 90
June 30, '87	"	87	375 00	2	1	6	47 26
July 23, '87	"	128	175 00	2	0	13	21 38
Nov. 12, '87	"	323	21 65	1	8	24	2 29
Dec. 3, '87	"	372	25 00	1	8	2	2 50
(Say) Oct. 20, '87	Price of narrow-gauge engine		1,650 00				
			19,282 82				$2,676 95
	Total interest		2,676 95				
	Total principal and interest		$21,959 77				

Embraced in Statement "B."

Endorsed: Filed Aug. 5, 1889. Ralph L. Goodrich, clerk, by W. P. Feild, D. C.

525 And on August 6, 1889, as follows:

On this day the master in chancery returns into the clerk's office his report in the above-entitled cause in reference to the matters referred to him on the 25th day of July, 1889, and, on motion, sixty days' time is given all parties to file exceptions to said report, and it appearing that the allowance of three hundred dollars made to the master on the 3d day of May, 1889, was on account of services performed and to be performed by the master, the exceptions thereto are withdrawn and the receiver directed to pay the same when he shall have funds in his hands for that purpose.

And on October 11th, 1889, as follows:

Comes the defendant John D. Beardsley, by J. M. Moore,
526 Esq., his solicitor, and asks leave to file exceptions to the report of the master in said cause.

And it appearing that it was ordered at the time of the filing of said report that defendant have leave to file his exceptions by the fourth Monday in October, it is accordingly ordered that he now have leave to file the same.

Which exceptions are as follows:

Comes the defendant John D. Beardsley and by leave of the court excepts to the report filed by the master in said cause, because said defendant is charged by the master in said report with the following items, viz:

$1,189.65 paid to him by the Arkansas and Louisiana Railway Company for expense incurred by him in several trips from Washington, Arkansas, to New York city and return on account of the business of said company.

527 $172.50, being the value of a standing desk and a lot of material, consisting of truck wheels, etc., belonging to defendant and sold by the Washington & Hope railway, the proceeds received by the Arkansas and Louisiana railway, and by it paid to said defendant upon a voucher numbered 1322½; $277.00, being the amount paid by the Arkansas & Louisiana Railway Company to defendant on account of hotel furniture and other property covered by a voucher numbered 1300.

$9,696.67, being the amount of certain notes called bonus notes, belonging to defendant, collected and appropriated by the Arkansas and Louisiana Railway Company, and by said company refunded to defendant under voucher numbered 1323½.

$3,897.00, being the amount of back salary paid by the Washington & Hope Railway Company to said defendant Beardsley on account of services rendered to said company and to the In-
528 dian Territory Railway Company, covered by voucher numbered 1324½.

$2,400, salary paid by the Arkansas and Louisiana Railway Company to the said defendant as general manager from August 16th, 1886, to April 1st, 1887, covered by voucher numbered 1325½.

$1,650, being the purchase price of a narrow-guage engine sold by the defendant, the proceeds whereof are by the master charged

to the defendant, notwithstanding the fact that he never received the same or any part thereof.

And interest on the several items above mentioned. Defendant says all of the aforesaid charges are illegal, unjust, and improper and should not have been made against him.

Wherefore he excepts to each and all of said charges, and for further exception said defendant says said report is vague, indefinite, and uncertain, in that it does not set out specifically the
529 nature of the liabilities with which it has charged said defendant.

And he further excepts to said report because the master has not returned therewith any testimony or evidence of any kind taken by him in said cause or upon which the said report is based, nor does it appear that the same is based upon any legal evidence taken by the master.

J. M. MOORE,
Att'y for Defendant.

530 & 531 UNITED STATES OF AMERICA, }
Western Division of the Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the western division of the eastern district of Arkansas, begun and holden on Monday, the 13th day of April, anno Domini one thousand eight hundred and ninety-one, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, circuit judge, 8th circuit, judge presiding and holding said court, the following proceedings were had, to wit, on May 9, 1891:

Come the parties, by their respective solicitors, and this cause coming on to be heard on the supplemental bill and the amendments and exhibits thereto and the answers of the defendants, John D. Beardsley, St. Louis, Iron Mountain and Southern Railway Company, and Jay Gould, and exhibits thereto and the several replications of the complainant to said answers and the depositions and other evidence introduced by the parties and the master's report filed herein and exceptions thereto, the court being well and sufficiently advised as to the matters of law and fact arising herein, and the premises being well and fully seen, the court doth
532 consider, order, adjudge, and decree that the said defendant John D. Beardsley holds in trust for the use and benefit of the said Arkansas and Louisiana Railway Company the title to the following-described lands, to wit:

The southeast quarter of section thirty (30), in township nine south, in range twenty-six west, containing one hundred and sixty acres; the west half of the southeast quarter of the southwest quarter and the east half of the southwest quarter of the southwest quarter of section thirty (30), in township ten south, in range five west, containing thirty acres, the same being the town site of the town of Ozan, on the line of said railway company.

And the court doth further consider, order, adjudge, and decree

that the said John D. Beardsley within thirty days from this date execute and deliver to the said Arkansas & Louisiana Railway Company a proper deed of conveyance conveying to said company
533 the legal title to all of said lands and all privileges, appurtenances, and improvements thereon or thereto in anywise appertaining.

And the court doth further consider, order, adjudge, and decree that the defendant John D. Beardsley's exceptions to the master's report be sustained as to the following items in said report, to wit: The items shown in Exhibit "B" to said report, as follows:

"1886.					
Sept. 13.	Expenses trip to	N. Y.,	Vo. No.	1103.....	$100 00
" 30.	" "	L. R.,	" "	1130.....	6 00
Dec. 3.	" "	"	" "	1174.....	6 50
" 24.	" "	N. Y.,	" "	1192.....	185 50
1887.					
Feb'y 22.	" "	N.Y.,&c.,	"	1268.....	50 00"

and interest on said several items, as shown in Exhibit "C" to said report.

And that said exceptions be also sustained to the extent of reducing the amount charged against said defendant for the narrow-gauge engine sold and appropriated by him belonging to the said Arkansas & Louisiana Railway Company from the sum of
534 $1,650.00, as found by said master, to the sum of $1,213.30 as the principal sum due on account of said appropriation, and that the interest on said sum found by the master be reduced from $177.65 to the sum of $130.53, and that said exceptions in every other particular be overruled.

And the court doth further consider, order, adjudge, and decree that the master's report as to all matters except as to the matters hereinbefore set out be approved and confirmed, and that the said Arkansas and Louisiana Railway Company do have and recover of and from the said defendant, John D. Beardsley, the sum of twenty-one thousand and seventy-two dollars and sixteen cents (21,072.16), with interest thereon from the 5th day of August, 1889, the date of the filing of the master's report, until paid, and that it have execution, garnishment, and other proper process therefor.

And it appearing to the court that since the rendition of
535 the decree on the original bill filed herein the Arkansas & Louisiana Railway Company hath issued and delivered to the defendants John D. Beardsley certificates for all the fully paid and non-assessable stock of said company ordered to be issued by said decree, thus making with the fully paid and non-assessable stock issued prior to said decree by said company the aggregate number of fifty-one hundred and twenty (5,120) shares of the face value of one hundred dollars (100.00) each, and the said John D. Beardsley, since the rendition of said original decree, hath sold and delivered to the defendant Jay Gould fifty-one per cent. of the whole of said shares of stock, and hath delivered the remainder thereof, to wit, forty-nine per cent., to A. L. Hopkins, as trustee, in pledge for

the use and benefit of said Jay Gould, which delivery in pledge was in violation of the rights of the complainant, as adjudged in
536 said original decree, the court doth, therefore, consider, order, adjudge, and decree that upon the payment by the complainant of the amount adjudged in original bill to be due John D. Beardsley, either to said John D. Beardsley or to his solicitor of record, the said John D. Beardsley and Jay Gould do deliver, and cause their trustee, A. L. Hopkins, to deliver, to the complainant or to his solicitors of record, or into the registry of the court, certificates for seventeen hundred shares (1,700) of the stock of the Arkansas & Louisiana Railway Company of the face value of one hundred dollars each of the stock so held by said trustee.

And the court doth further consider, order, adjudge, and decree that upon the payment by the Arkansas & Louisiana Railway Company of its debt to the defendant St. Louis, Iron Mountain & Southern Railway Company, for which certain of the bonds of said Arkansas
537 & Louisiana Railway Company are held in pledge, as per the settlement contract between said companies of June 11, 1885, and upon the payment by the complainant of his said indebtedness to said John D. Beardsley, the defendants, John D. Beardsley, St. Louis, Iron Mountain and Southern Railway Company, Arkansas & Louisiana Railway Company, and Jay Gould, and their trustee or trustees will deliver to the complainant or his solicitor of record eight- (80) of the two hundred and forty (240) first-mortgage bonds now held by the St. Louis, Iron Mountain & Southern Railway Company or its trustee, R. S. Hayes, as collateral security for the debt now due from the Arkansas and Louisiana Railway Company to the St. Louis, Iron Mountain and Southern Railway Company; and the said Arkansas and Louisiana Railway Company will, after such payments, cause to be duly and properly certified forty-eight (48) of the one hundred and forty-four (144) earned but uncertified bond- of said Arkansas & Louisiana Railway Company and deliver
538 them to the complainant or to his solicitor of record.

And the court doth further consider, order, adjudge, and decree that each and all of said defendants are enjoined and restrained from carrying out any of the terms and conditions of the contracts and agreements made by John D. Beardsley and Jay Gould on March 7th and July 14, 1887, which in any manner conflict with the interests and rights of the complainant, as adjudged and declared in this decree or with the decree heretofore rendered on original bill.

And the court doth further consider, order, adjudge, and decree that the defendant John D. Beardsley pay all the costs accrued in this cause, including one hundred and fifty dollars to be paid to the Arkansas and Louisiana Railway Company of the six hundred dollars heretofore paid by said company, to the master for his services in this cause, said one hundred and fifty dollars so charged
539 to the said John D. Beardsley being for the services of the master in reporting upon the liability of said defendant, and that the costs of the receiver be paid by the Arkansas and Louisiana Railway Co.

And the court doth further order that the control of the cause be retained by this court for any further orders that may become necessary in the enforcement and execution of this decree.

540 On June 16, 1891, as follows:

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY, ARKANSAS AND LOUISIANA RAILROAD, *et al.*

And now, on this day, comes the defendant John D. Beardsley, by J. M. Moore, Esq., his solicitor, and files his assignment of errors and prays an appeal to the Supreme Court of the United States from the first decree rendered in this cause on the ninth day of May, 1891; which prayer for appeal is allowed.

And thereupon the defendant filed a supersedeas bond in the sum of thirty thousand dollars; which bond is approved, and it is ordered that the same operate as a supersedeas of the decree rendered against the defendant John D. Beardsley in this cause.

Which supersedeas bond is as follows:

541 In the Circuit Court of United States for the Eastern District of Arkansas, in Chancery Sitting.

PAUL F. BEARDSLEY
vs.
JOHN D. BEARDSLEY *et al.*

Know all men by these presents that we, John D. Beardsley, as principal, and W. H. Carruth, A. H. Carrigan, John C. Ware, A. J. Robbins, J. J. Thomas, James M. Hannegan, and H. B. Holman, are held and firmly bound unto the Arkansas and Louisiana Railway Company and to its successors and assigns in the sum of thirty thousand dollars; to which payment, well and truly to be *to be* made, we bind ourselves and each one of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals; dated this the 23rd day of May, in the year 1891.

542 Whereas the above-named John D. Beardsley hath prosecuted an appeal in the Supreme Court of the United States to reverse the judgment rendered against him and in favor of the said Arkansas and Louisiana Railway Company in the above-entitled action by the circuit court of the United States for the eastern district of Arkansas, in chancery:

Now, therefore, the condition of this obligation is such that if the above-named John D. Beardsley shall prosecute his said appeal to effect and answer all costs and damages if he shall fail to make

good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

J. D. BEARDSLEY.
A. H. CARRIGAN.
A. J. ROBBINS.
JAMES M. HANEGAN.
W. H. CARRUTH.
JNO. C. WARE.
J. J. THOMAS.
H. B. HOLMAN.

The above supersedeas bond is taken and approved and ordered to operate as a supersedeas this 16th day of June, 1891.

JNO. A. WILLIAMS, *Judge.*

Filed June 16, 1891.

RALPH L. GOODRICH, *Clerk.*

542*a* Which prayer for appeal and assignment of errors is as follows:

In the United States Circuit Court for the Eastern District of Arkansas. In Chancery.

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY *et al.*

Comes the defendant John D. Beardsley and files herewith his assignment of errors in said cause, and thereupon prays an appeal from the rulings and decree in this cause to the Supreme Court of the United States.

J. M. MOORE,
Solicitor for J. D. Beardsley.

In the Circuit Court of the United States for the Eastern District of Arkansas. In Chancery.

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY *et al.*

542*b* Comes the defendant John D. Beardsley and files the following assignment of errors committed by the court during the progress and upon the hearing of said cause, to wit:

The court erred—

In overruling defendant's demurrer to the bill filed herein by the complainant.

In overruling defendant's motion to strike said bill from the files of the court, because the same was filed without leave of the court first had and obtained.

In overruling defendant's motion to dismiss complainant's bill for want of jurisdiction.

John J. Beardsley, jurisdiction of said cause.
pany were in[illegible]ining and taking jurisdiction of the original bill filed cause, to wit: as supplemental to a prior proceeding between the complainant and this defendant.

In entertaining jurisdiction of the original bill filed in this cause and the amendments thereto as supplemental to a prior proceeding between the complainant and this defendant.

542c In the decree entered on the 25th day of July, 1889, referring said cause to the master in chancery to take an account between this defendant and the Arkansas and Louisiana Railway Company.

In permitting the complainant to file said bill and maintain said action as a stockholder of the Arkansas and Louisiana Railway Company.

In decreeing said defendant to be a trustee for the Arkansas and Louisiana Railway Company as to the lands mentioned and described in said decree, and in decreeing that he convey the same to the railway company.

In overruling defendant's exceptions to the report of the master, C. B. Moore, to the extent that the same were by the court overruled, and in approving said report and charging defendant with the several items and amounts therein charged against him by the master to the extent that the same was by the court approved and said items and accounts were charged against him.

542d In decreeing against defendant and in favor of the Arkansas and Louisiana Railway Company the sum of $21,072.16, with interest thereon from the 5th day of August, 1889, or any part thereof.

In ruling and holding that the defendant was liable to the Arkansas and Louisiana Railway Company for the several allowances and payments made by said company to defendant under the resolutions adopted by the directors of said company on the 26th day of March, 1887.

In decreeing that the defendant Jay Gould, upon the payment by the plaintiff to this defendant of the amount "adjudged on original bill to be due him," deliver or cause to be delivered to the plaintiff certificates for seventeen hundred shares of the stock of the Arkansas and Louisiana Railway Company of the face value of one hundred dollars each.

542e In decreeing that upon the payment by the Arkansas and Louisiana Railway Company of its debt to the defendant The St. Louis, Iron Mountain and Southern Railway Company, for which certain of the bonds of the Arkansas and Louisiana Railway Company are held in pledge, as per the settlement contract between said companies of June 11, 1885, and upon the payment by complainant of his indebtedness to the defendant, this defendant and the Arkansas and Louisiana Railway Company, the St. Louis, Iron Mountain and Southern Railway Company, and Jay Gould and their trustees deliver to the complainant eighty of the two hundred and forty first-mortgage bonds held by the St. Louis, Iron Mountain and Southern Railway Company or its

trustee, R. S. Hayes, as collateral security for the [illegible]rise to remain Arkansas and Louisiana Railway Company to the [illegible] Mountain and Southern Railway Company, and that the [illegible] and Louisiana Railway Company, after such payments, cause forty-
eight of the one hundred and forty-four uncertified bonds of
542*f* said company to be duly certified and deliver the same to the plaintiff.

In enjoining and restraining this defendant and his codefendants from carrying out the terms and conditions of the agreement of March 7th, 1887, between this defendant and his codefendant, Jay Gould.

In permitting the complainant to file an amendment to his bill under leave granted by the order of the court entered on the 23rd day of July, 1888, and in permitting him to withdraw his replications and file an amendment to his said bill under the order of the court entered on the 23rd of March, 1889.

In permitting the complainant to join in one action several distinct and independent matters which could not be united in one action and the joinder of which rendered his bill in this cause multifarious.

(Signed) J. M. MOORE,
Solicitor for Defendant John D. Beardsley.

Endorsed: Filed June 16, 1891. Ralph L. Goodrich, clerk.

543 On July 19, 1889, the following agreement was filed:

544 We, Dan. W. Jones and Thomas B. Martin, attorneys for the complainant, Paul F. Beardsley, and John M. Moore, attorney for John D. Beardsley, and Dodge and Johnson, attorneys for Arkansas and Louisiana Railway Company, St. Louis, Iron Mountain and Southern Railway Company, and Jay Gould, consent and agree that all of the record, including the bill and exhibits thereto, the answer and exhibits thereto, and all depositions taken and used as well for the complainant as the defendants, the decree of the court and the report of the special master, Thomas H. Simms, in the case of Paul F. Beardsley against John D. Beardsley and Arkansas and Louisiana Railway Company, heard and determined in this court, and to which this suit is supplemental, may be used as evidence by either party to this action on the hearing thereof, subject to
545 objections for competency and relevancy only.

Dated this March 19, 1889.

DAN. W. JONES &
THOS. B. MARTIN,
For Paul F. Beardsley.
J. M. MOORE,
For John D. Beardsley.

———,
For Arks. & La. R'y Co., St. L., I. M. & S. R'y Co., & Jay Gould.

In pursuance to the above agreement the following portions of the record and files of this court in the case of Paul F. Beardsley *vs.*

John J. Beardsley and the Arkansas and Louisiana Railway Company were introduced and read in evidence at the hearing of this cause, to wit:

546 Be it remembered that on the 11th day of March, 1886, came into the office of the clerk of the circuit court of the United States for the eastern district of Arkansas Paul F. Beardsley, by Jones & Martin, Esqs., his solicitors, and filed therein his bill of complaint, on the chancery side of said court, against John D. Beardsley and the Arkansas and Louisiana Railway Company; which bill of complaint is is the words and figures following, to wit:

UNITED STATES OF AMERICA,
Eastern District of Arkansas.

In the Circuit Court.

PAUL F.° BEARDSLEY, Complainant,
v.
JOHN D. BEARDSLEY and ARKANSAS AND LOUISIANA RAILWAY COMPANY, Defendants. } Bill.

To the honorable the judges of the circuit court of the United States for the eastern district of Arkansas:

Your orator, Paul F. Beardsley, complains of the defendants, John D. Beardsley and The Arkansas and Louisiana Railway Company, and states that your orator is a citizen of the State of Tennessee, and the defendant, John D. Beardsley, is an alien and a subject of the Kingdom of Great Britain, and now a resident of the county of Hempstead, in the State of Arkansas, and the defendant, Arkansas and Louisiana Railway Company, is a corporation organized under the laws of the State of Arkansas and located in part in the eastern district thereof, with its principal office in the town of Washington, in the county of Hempstead aforesaid.

Your orator further states that the defendant, Arkansas and Louisiana railway, was organized in the following manner—that is to say: On the 11th day of April, A. D. 1877, certain citizens of the said town of Washington organized the Washington and Hope Tramway Company under the general laws of the State of Arkansas regulating the formation and government of private corporations, and on the 7th day of May, 1877, filed their articles of association in the office of the secretary of state of the State of Arkansas, which, among other things, provided that the capital stock of said corporation should be twenty thousand dollars, divided into shares of twenty-five dollars each; that said tramway should commence at said town of Washington and end at the town of Hope, in the same county, a distance of between nine and ten miles, and that the incorporators, their successors and assigns, reserved the privilege, whenever the same should be deemed advisable and expedient by a majority in interest of the stockholders, to change the tramway into a railroad corporation in accordance with the laws of the State;

said articles of association were duly recorded by said secre-
547 tary of state in a book provided by law for that purpose, and a true copy thereof is herewith filed, marked Exhibit "A," and prayed to be taken and considered a part of this bill.

On the 31st day of May, 1877, all of the stockholders of said tramway company, deeming it advisable and expedient so to do, changed said tramway company into a railroad corporation in conformity with the laws of said State, and together with other citizens of said town of Washington entered into articles of association for the organization of the Washington and Hope Railway Company, which, among other things, provided that the capital stock of said corporation should be forty-five thousand dollars, divided into shares of twenty-five dollars each, and that said railroad should be commenced at said town of Washington and run thence to said town of Hope; and on the 11th day of June, 1877, three of the directors of said corporation made an affidavit that at least one thousand dollars for every mile of the road described in said articles of association had been subscribed, and that five per cent. on the amount subscribed had been actually paid unto the directors named in said articles, which affidavit was attached to said articles of association and with them filed with said secretary of state on the 14th day of June, 1877; said articles of association and said affidavit were duly recorded together by said secretary of state in a book provided by law for that purpose, and a true copy thereof is herewith filed, marked Exhibit "B," and prayed to be taken and considered as a part of this bill.

On the 7th day of November, 1881, an amendment to the articles of association of the Washington and Hope Railway Company was filed in the office of said secretary of state, by which said road was extended from said town of Washington in a northwesterly direction to the line of the Indian Territory, and from said town of Hope in a southeasterly direction to the line of the State of Louisiana; the name of the corporation was changed from Washington and Hope Railway Company to the Arkansas and Louisiana Railway Company, but it was expressly provided that "the present organization of the Washington and Hope Railway Company shall continue, and the change of name and extension of the road shall not be held to make any change in the organization, time of election, the by-laws or obligations of the Washington and Hope Railway Company." The capital stock was increased to one million dollars, divided into shares of twenty-five dollars each; the stock of the Washington and Hope Railway Company to be stock of this company and the holders thereof to vote it as such, and at their option to exchange it for stock under the new name in like amounts. Such amendment was duly recorded by said secretary of state in a book provided by law for that purpose, and a true copy is herewith filed, marked Exhibit "C," and prayed to be taken and considered as a part of this bill; but said organization was never perfected so as to become a corporation under the laws of Arkansas, but was subsequently abandoned. On the 13th day of September, 1882, articles of association of the Arkansas and Louisiana Railway Company were filed in the

office of said secretary of state, which, among other things,
548 provided that the road should commence at said town of Hope and run in a southeasterly direction through certain counties therein named to the line of the State of Louisiana, and that the capital stock should be one million and two hundred thousand dollars, divided into shares of one hundred dollars each, in which corporation your orator held two hundred shares and the defendant, John D. Beardsley, four hundred shares, as shown by said articles. Said articles of association were duly recorded by said secretary of state in a book provided by law for that purpose, and a true copy thereof is herewith filed, marked Exhibit "D," and prayed to be taken and considered as a part of this bill.

On the same day and by the same persons articles of association of the Arkansas and Indian Territory Railway Company were filed in the same office, which, among other things, provided that said road should commence at the line between the State of Arkansas and the Indian Territory, in the county of Sevier or the county of Polk, as might be found best on a survey of the line; thence in a southeasterly direction to or near the town of Washington, and terminate at a junction of the Washington and Hope railway, then in operation, and that the capital stock should be one million dollars, divided into shares of one hundred dollars each, in which corporation your orator held two hundred shares and the defendant, John D., four hundred shares, as shown by said articles. Said articles of association were duly recorded by said secretary of state in a book provided by law for that purpose, and a true copy thereof is herewith filed, marked Exhibit "E," and prayed to be taken and considered as a part of this bill.

On the 18th day of September, 1882, an affidavit was made by three of the directors of the Arkansas and Indian Territory Railway Company that at least one thousand dollars for every mile of said road had been subscribed, and that five per cent. on the amount subscribed to the articles of association had been actually paid unto the directors named in said articles, which affidavit was filed in the office of said secretary of state on the 20th day of September, 1882, and by him recorded in a book provided by law for that purpose, a true copy of which is herewith filed, marked Exhibit "F," and prayed to be taken and considered as a part of this bill.

On the 18th day of September, 1882, the Washington and Hope railway, with all the property of every kind, nature, character, and description, were sold to, purchased by, and completely merged in the Arkansas and Indian Territory Railway Company, which sale was duly ratified by the stockholders of the said Washington and Hope railway. A duly authenticated certificate of such sale and purchase was filed and recorded in the office of the clerk of the circuit court and *ex officio* recorder for said Hempstead county on the 3rd day of January, 1883, and on the 12th day of January, 1883, was filed in the office of the secretary of state, and by him duly recorded in a book provided by law for that purpose, a true copy whereof is herewith filed, marked Exhibit "B," and prayed to be taken and considered as a part of this bill:

549 On the 1st day of March, 1883, three of the directors of the Arkansas and Louisiana Railway Company made affidavit that at least one thousand dollars for each mile of said road described in the articles of association and intended to be built had been subscribed, and that five per cent. on the amount so subscribed had been actually paid unto the directors named in said articles. On the 17th day of June, 1883, the Arkansas and Indian Territory railway, together with all its property of every kind, nature, character, and description, including all the property purchased by it from the Washington and Hope railway as aforesaid, was sold to, purchased by, and completely merged in the Arkansas and Louisiana Railway Company, which sale and purchase were duly ratified by the stockholders of both corporations.

On the 12th day of June, 1883, the capital stock of the Arkansas and Louisiana Railway Company was increased from one million and two hundred thousand dollars to two million and four hundred thousand dollars, which affidavit of the directors and certificates of such sale and purchase and of said increase of stock were filed together in said office of said secretary of state on the 25th day of June, 1883, and by him duly recorded in a book provided by law for that purpose, and a true copy thereof is herewith filed, marked Exhibit "H," and prayed to be taken and considered as a part of this bill.

Your orator further states that the General Assembly of the State of Arkansas passed an act, which was approved by the governor of said State, on the 5th day of March, A. D. 1879, entitled "An act to donate certain lands to the Washington and Hope Railway Company," in and by which all lands lying in the county of Hempstead aforesaid which had been forfeited to the State for non-payment of taxes and not redeemed according to law, and also all such lands as might be so forfeited within five years of the passage of said act and not redeemed according to law, and also all swamp and overflowed lands in said county which had been or might afterward be confirmed to the State which had not been sold or conveyed by the State, were donated to said Washington and Hope railway upon condition that said railway should be completed in good running order from Washington to Hope within five years next after the passage of said act; and it was by said act made the duty of the governor of said State to execute deeds to said company upon compliance with said condition; and your orator states that said railway company realized from said donation about twenty thousand acres of land for which said governor executed deeds as aforesaid.

Your orator further states that after the passage of said act the stockholders of said Washington and Hope railway commenced active operations thereon, and progressed so far in their work of constructing a narrow-gauge railroad as to clear out the right of way along the entire line and grade the greater part of the road-bed between said towns of Washington and Hope, when negotiations were entered into between said corporation and the defendant, John D., acting for himself and one Vinton Alderman, by which said corporation agreed to transfer and assign to said defendant all

the property of said corporation, including the lands granted
550 by the aforementioned act of the legislature, and also give him a bonus of ten thousand dollars in the promissory notes of said stockholders and other citizens of said county of Hempstead, upon the condition that said defendant should complete said road and operate it under the laws of the State. These negotiations were consummated during the year 1879, and the said defendant and the said Vinton Alderman became the absolute owners of said Washington and Hope railway, as tenants in common, with equal interests, and commenced their work of constructing the same as a narrow-gauge railroad. Your orator cannot exhibit a copy of the agreement entered into between said corporation and the defendant, John D., for the reasons to be hereinafter stated.

Your orator further states that the said defendant, John D., and the said Vinton Alderman proceeded under great difficulties, for lack of means, with their work of constructing said narrow-gauge railroad, by using for a while wooden stringers for rails for a part of the road and iron rails for the remainder, but afterwards securing all iron for rails, until the latter part of the year 1881, when the said Alderman became desirous of disposing of his one-half interest therein. At that time your orator was a citizen of the State of California, where he received letters from the defendant, John D., who is his older brother of the full blood, urging him to come and take an interest in said railroad enterprise, as he had frequently done before that time and before his connection with said Alderman. Upon these solicitations your orator went to said town of Washington and ascertained that said Alderman's interest in said corporation could be purchased for about ten thousand dollars in cash; but, not possessing that amount of money, he went to the city of New York, at the suggestion and solicitation of his said brother, and there attempted to secure a loan of that sum for the purpose of making such purchase. In this he failed, and returned to the town of Washington about November 1st, 1881, and agreed with his said brother to work for said corporation for seventy-five dollars per month for a short while, until he could make more satisfactory arrangements. Within a week or two after returning he and his said brother ascertained from said Alderman, who was then in the State of West Virginia, that he would dispose of his one-half interest in said railway for twelve thousand dollars upon a credit, and thereupon your orator and his said brother, the defendant, John D., agreed together that said defendant should write to said Alderman and accept his terms of sale, your orator insisting upon taking the whole of said Alderman's interest for the sum of twelve thousand dollars as aforesaid, to the end that said railway with all its property should become the joint property of your orator and said defendant, share and share alike, but they agreed that your orator should have only two-thirds of said interest, which would then make your orator's interest in said property one-third of the whole whereof, and to this your orator finally consented. After this agreement the said defendant wrote said Alderman, saying that he would take his interest in said railway and its property

for said sum of money, and in due course of mail received
551 a reply from said Alderman saying that he would consider his said interest sold to him. At that time neither your orator nor defendant, John D., had any money of any consequence, and on that account they were compelled to proceed with their work under great difficulties. The road was operated as far as completed, and all of its proceeds were employed in the payment of its debts and for repairs, both your orator and said defendant giving their individual labor with the common laborers employed by them and using the most rigid economy compatible with existence. Soon after this purchase from said Alderman, no part of which had then been paid, and on the 1st day of January, 1882, the defendant, John D., handed your orator a paper-writing, which is in exact words and figures, following:

"W. H. Carruth, president. J. D. Beardsley, superintendent.

SUPERINTENDENT'S OFFICE,
WASHINGTON AND HOPE RAILWAY COMPANY,
WASHINGTON, ARK., *Jan. 1st*, 1882.

Memorandum.

I hold of the stock of the Washington and Hope Railway Company thirty-three thousand two hundred and fifty dollars, in thirteen hundred and fifty shares, which is sold to Paul F. Beardsley, and which, though standing in my name, belongs to him, subject to a payment of eight thousand dollars, with interest at same rate and from same date as interest on my purchase of Mr. Alderman's stock.

J. D. BEARDSLEY.

Witness:
J. H. BURT."

Said paper-writing, except the printed heading and the name J. H. Burt, is in the genuine handwriting of the said defendant, John D., and is held by your orator for greater security against loss or destruction, but subject to inspection by the court and parties. Your orator, having implicit confidence in the honesty of purpose and sincerity of motive of his said brother, accepted the said memorandum of evidence of his share and went heartily, earnestly, and untiringly to work to make the enterprise a success, and, although said memorandum states that thirteen hundred and fifty shares of the stock were sold to your orator, still he is willing to admit that this was a mistake in calculation made by his said brother, and that it was intended to be only thirteen hundred and thirty-three and one-third shares, that being one third of all the stock. At the same time, in making this admission, he calls attention to the further mistake in said memorandum as to the value of said shares, which should be thirty-three thousand three hundred and thirty-three and one-third dollars intead of thirty-three thousand two hundred and fifty dollars, and he had all the while and does now treat said memorandum as if thus reformed, to the end that it

552 shall conform to the true intention of the parties and properly express the contract as entered into between his said brother and himself.

Your orator further states that some time before the transactions last above stated the stock of the said Washington and Hope Railway Company had been increased from forty-five thousand dollars to one hundred thousand dollars, divided into shares of twenty-five dollars each, in all four thousand shares, but at what time this was done he is unable to state, for the reasons to be hereinafter given.

Your orator further states that the said defendant, John D., and your orator worked together harmoniously and in full confidence with each other, consulting together in all matters pertaining to their said railway enterprise without reserve, and succeeded in completing a first-class narrow-gauge all-iron-rail railroad in full operation between said towns of Washington and Hope, with all necessary switches, side tracks, turnouts, engine, rolling stock, and other appurtenances, including a depot building and platforms at the town of Washington and proper accommodations for receiving and landing passengers and freight at the town of Hope, it being well understood and agreed both by your orator and said defendant that your orator's interest in all of said property was one-third thereof and said defendant's was two-thirds thereof, the interest of the president and other directors of said corporation being merely nominal and only for the purpose of sustaining the corporate existence under the laws of Arkansas.

Being in this condition and owing but a small debt, your orator and his said brother, the defendant, John D., after full consultation and agreement, concluded to change the gauge of their said railway and make it uniform with the gauge of the St. Louis, Iron Mountain and Southern railway, with which it made connection at said town of Hope, and to extend the line of said road, provided they could make the necessary arrangements for money to carry out their plans and for freight rates with said last-named corporation. Such arrangements were soon thereafter made and work of changing said gauge commenced. Soon after this the said defendant, John D., acting for himself and your orator, entered into a construction contract with the board of directors of said defendant railway, the terms and conditions of which your orator cannot give with any degree of accuracy, for the reason to be hereinafter stated, except to say that said board of directors, having, with the exception of your orator, as hereinbefore stated, nothing more than a merely nominal interest in said corporation, were willing to and did make and ratify any and everything proposed by said defendant, John D., concerning the construction, operation, and management of said defendant railway; and your orator, having intrusted such matters to said defendant, his said brother, and reposing the utmost confidence in his judgment, integrity, and good faith, did not even read said construction contract, as he now remembers, but joined with the other members of said board of directors (if indeed he were then a director at that time) in ratifying the same, being instigated to do all

things which his said brother might have suggested in these matters by his implicit confidence and his full belief that it was
553 for the mutual benefit of his said brother and himself according to their respective interests as aforesaid.

Your orator cannot file or exhibit a copy of the proceedings of said board of directors nor of said construction contract, for the reasons to be hereinafter stated, but he charges the truth to be that in all these matters, as well as in all other matters pertaining to said railway and its properties, that the defendant acted for himself and as trustee for your orator without any change whatever of their respective rights or interests therein; that said defendant was and is, as before stated, your orator's older brother, of the full blood, and your orator had no reason to believe that his said brother would abuse his trust or act otherwise than with the utmost good faith with him; that fully imbued with this confidence, he did not exact or even request from his said brother any other writing or evidence of his interest in said railway and its properties, either present or prospective, or in said construction contract, nor was any modification or change of any kind whatever of their respective rights or interests therein, as they have hereinbefore been stated to be, either made or suggested to be made either by your orator or his said brother, and that although he has diligently ransacked his brain for the purpose, in view of the subsequently occurring transactions, to be hereinafter stated, he can recall nothing, either of word or act of his own, which might be construed into a relinquishment of any part of a full one-third interest in said railway, in all of its stock, and in all of its property of every kind and in said construction contract, subject only to the payment of its debts and whatever your orator may be owning individually upon his said Alderman purchase, as will be hereinafter more particularly stated.

Your orator further states that after said construction contract was made there was no change whatever in the relations existing before that time between his said brother and himself, but each gave his time, labor, and skill, as well as all the assets which came from the Washington and Hope railway, to the enterprise the same as before.

And your orator further states that during the month of November, 1883, they had succeeded in changing the gauge of said railway as contemplated for the whole distance between said towns of Washington and Hope. In the meantime they had commenced upon the construction of the road from the town of Washington to the town of Nashville, in Howard county, Arkansas, and on the 4th day of October, 1884, completed it, and have been since that time running trains thereon, so that said railway now extends the whole distance from said town of Hope by way of Washington to said town of Nashville, a distance of about twenty-six miles, and is a first-class standard-gauge road for both passengers and freight, with all necessary switches, side tracks, turnouts, depot buildings, platforms, &c.

In these four years during which your orator has been connected with this enterprise he has given his entire time, day by day and

ble portions of many nights, to the work upon the road and
m its interests. He is a good locomotive engineer and a good
machinist. He has great physical strength and as much endurance as any man with whom he has ever met. He has not confined himself to any one branch of the business, but has laid ties and rails, built bridges, worked in the mud and water with the common laborers, in rain and snow and storm as in sunshine, not ceasing his labors because of the weather or the night-fall, but continuing them until the end in view was accomplished without regard to the elements, the seasons, or the hours for refreshment and repose. In addition to all this he superintended the entire construction and operating of said road, and nothing was done thereon without his supervision and control. He has acted as engineer when necessary, and it was often necessary, & has frequently spent the whole night upon his engine and then worked unceasingly all the next day and regularly thereafter. He has gone into the machine shop of the road and repaired the engines and done any other work to save expense or meet an emergency. He has repaired cars as well as engines, and in fact there is nothing upon this whole line of road that has been done without his having taken a part in it. There is scarcely a piece of timber, whether of bridge or trestle or cross-tie, and scarcely a piece of iron, whether of rail or fish-plate or spike, from Hope to Nashville that has not been handled by him in one way or another or has felt the sweat from his brow or his hands. All these things has he done, and more, and during all these years he has taken from the revenues of the road not one dollar more than would actually suffice for the bare necessities of life for himself, his wife, and his little children, rarely exceeding in any one month more than one hundred dollars and oftener a much less amount. All these things has he done, and more, for the purpose of accumulating a fortune for himself and family by honest and honorable industry and without one fear that his hopes were to be thwarted by the unworthy conduct of his said older brother, as will be hereinafter particularly stated. Your orator further states that when your orator made his said purchase of the Alderman interest the said defendant, John D., had assumed the title of "superintendent" of said railway and gave your orator the title of "assistant superintendent" thereof; but about the month of December, 1885, said defendant arbitrarily assumed the title of "lessee and general manager" and gave your orator the title of "master of transportation," having before that time or about the month of December, 1883, arbitrarily fixed his own salary at two hundred dollars per month and that of your orator at one hundred dollars per month.

Your orator did not assent to this arrangement of salaries, but protested against it for the reason that he believed the amounts ought to have been reversed so as to have given your orator double the amount which said defendant should have had if they were to be proportioned to the amount of labor and skill devoted by each, or at least an equal amount; but your orator took no active steps beyond protesting and objecting against this arrangement at the time for the reason that he did not wish to create any ill-feeling

between his said brother and himself, and because he
555 that the matter would be satisfactorily adjusted between
t was when the work of constructing the said railway to its terminal points should be concluded, and for the further reason that he recognized the fact that the road needed all its money for construction and to meet its liabilities, and he was willing to use the utmost frugality in his personal and domestic expenditures to accomplish these ends; but your orator did not conceive that his said brother was then paving the way to oust him of his title to his said property or to claim that your orator's relation to said railway was merely an employee for wages and nothing more. Such, however, was the fact.

During the month of January, 1886, in the course of a private correspondence between your orator and his said brother in relation to a misunderstanding between them regarding domestic matters, your orator was informed by said defendant that he did not recognize your orator as a party in interest in said corporation, but merely as an employee for wages, and that he as sole lessee and general manager of said railway considered his own powers over said corporation to be supreme, and that he could do with it just as it should suit his own pleasure to do without regard to your orator's wishes or claims of interest in the matter. To this your orator seriously demurred and expressed his astonishment at such an assumption on the part of his said brother, in whom he had reposed such trust and confidence; but after a lengthened correspondence and repeated efforts on the part of your orator to adjust the matter without resort to the courts he received a letter from Mr. H. H. Wheless, the auditor of the defendant railway, which is in words and figures following:

"J. D. Beardsley, lessee and general manager; W. H. Carruth, treasurer; P. F. Beardsley, master of transportation; H. H. Wheless, auditor.

ARKANSAS AND LOUISIANA RAILWAY,
AUDITOR'S OFFICE,
WASHINGTON, ARK., *February 15th*, 1886.

P. F. Beardsley, Esq., master of transportation, Nashville.

DEAR SIR: The general manager requests me to say to you that from this date your services will not be required. Voucher will be made you for entire month—February—but it will not be necessary for you to complete the unexpired time covered by this. He requests me to receive from you all tools, material, papers, &c., in your possession belonging to the Arkansas and Louisiana railway; also your passes, keys to offices, desk, &c.

Respectfully yours, H. H. WHELESS, *Auditor.*"

The original of this letter your orator holds in his possession for greater security against loss or destruction, but subject to the inspection of the court and parties. The same demand was made by

the defendant, John D., in person, and your orator refused compliance with it, as well as that of said auditor.

556 Your orator further states that, finding all overtures upon his part for an amicable adjustment to be futile, and them and himself treated with contempt by his said brother, the defendant, John D., he found a resort to the courts to be indispensable for the security and protection of his rights, and, upon the advice of his counsel, applied to said auditor of the defendant railway for a statement of the financial condition of said railway, as the same appears by the books kept by him, to the end that he might use such statement in this suit. This was refused by said auditor for the reason given by him, that he was instructed by the defendant, John D., not only not to give your orator any statement from said books, but under no circumstances whatever to permit your orator to inspect or look into said books. Your orator then, under the further advice of his counsel, applied to the secretary of the board of directors of the defendant railway for permission to examine the books of the corporation for the purpose of obtaining therefrom information deemed by his said counsel to be necessary for use in bringing this suit. This was refused by said secretary for the reasons given by him, that he was instructed by the defendant, John D., not only not to give your orator any statement from said books, but under no circumstances whatever to permit your orator to inspect or look into said books. Your orator reminded said secretary that your orator was and is a stockholder in said corporation as well as a director therein, and as such was entitled to inspect said books, and that it is made a cause for forfeiture of the charter of said corporation under the laws of the State of Arkansas for him to refuse this permission to examine said books; but said secretary still refused such permission, or to furnish your orator any information whatever from said books; and your orator charges the truth to be that said secretary is one of the attorneys for said defendant, John D., and in thus refusing a privilege belonging of right and under the law to your orator he acted under the direction of said defendant. In consequence of this conduct on the part of said auditor and said secretary, who were acting under the direction of the defendant, John D., as aforesaid, your orator has been unable to make exhibits, or even positively accurate statements, of many things deemed by his counsel to be proper and necessary to the correct understanding of your orator's rights and the defendants' liabilities in the premises.

Your orator further states that, after entering into the contract of purchase of two-thirds of the Alderman interest in the Washington and Hope railway, on the 1st day of January, 1882, as aforesaid, your orator and the defendant, John D., having full confidence in the honesty, integrity, and good faith of each other, having no books of account as between themselves, but each took from the revenues of the business from time to time whatever was necessary for the actual wants of himself and family and no more; but in January, 1884, they concluded to employ an auditor and keep accurate accounts of all the affairs of the defendant railway, which has been

done since that and is still done. Your orator, as before stated, has been refused access to said books and is unable for
557 that reason to state many transactions of a financial nature which appear upon said books, but from his recollection and from memoranda made by him while having access to said books, and from information obtained from said auditor before he was prohibited from giving information, he is able to make the following statement, which he charges to be true: The total credit given to said Vinton Alderman upon said books for his one-half interest in the Washington and Hope railway is $12,000, twelve thousand dollars, and the total amount charged to him as having been paid by said defendant railway amounts to forty-eight hundred dollars ($4,800), which was paid from time to time and before the 13th day of February, 1886, and entirely out of the earnings and profits of said defendant railway, and after your orator's said purchase was made; and there also appears upon said books a credit to the defendant, John D., in the sum of forty-seven hundred and thirty-two dollars and fifty cents ($4,732.50) as the proceeds of the sale of a part of the iron, fish-plates, spikes, and cars, which were of the property of the Washington and Hope railway and belonged to the same at the time and after your orator's said purchase of his interest therein as aforesaid. And your orator charges that said credit should not have been made to the defendant, John D., but that said sum belonged of right to the defendant railway, and he further charges that said sum was used by the defendant, John D., for his own private purposes and without the knowledge or consent of your orator, and was a wrongful conversion of the trust funds in his hands; and there also appears upon said books a statement of the purchase of two thousand fire-brick for the use of the defendant railway, and which were charged as such, but your orator states that a large number of said bricks, at least one-half of them, were used by the defendant, John D., for his own private purposes and no charge to himself has been made upon said books, and that said bricks were worth and readily sold for eight cents each. And your orator further states that said defendant, John D., used of the earnings and profits of said defendant railway from time to time large sums of money for travelling expenses for himself and family and the education of his children abroad and other matters not appertaining to the business or affairs of the defendant railway, but he cannot say what amounts were used for these purposes, nor whether proper charges were made upon said books against said defendant, John D., for them; and in fact your orator has no way, except through this honorable court, of ascertaining the condition of the affairs of said railway and the value of his interest therein, on account of the arbitrary powers which the defendant, John D., is exercising over the officers of said railway and over the entire business and properties thereof, in utter contempt and disregard of your orator's rights and demands.

Your orator further states that the defendant, John D., during the year 1884, used of the earnings and profits of the defendant railway a considerable amount of money in building a residence upon

lots and a piece of land in said town of Washington, which he claims to be his private property, and he is now engaged in
558 building considerable additions to said residence, and is using the same for his private use and account, and for this, as your orator is informed and believes and so states, has made no proper charge against himself upon the books of the defendant railway. Your orator further states that the assets of the Washington and Hope railway at the time your orator purchased his interest therein as aforesaid, and which were afterwards sold to the Arkansas and Indian Territory railway, and by the Arkansas and Indian Territory railway to the defendant railway, as hereinbefore stated, were, according to your orator's recollection and belief, as follows:

Amount due from bonus notes since collected, about...	$6,000 00
Amount since realized from sale of iron, fish-plates, spikes, bolts, and cars, about	14,000 00
Amount since realized from sale of lands granted by State as aforesaid, about	8,000 00
Amount of net earnings of narrow-gauge railway for year 1882, about	8,000 00

And your orator states that all of said assets, as well as all of the assets, earnings, and profits since then realized by the defendant railway corporation, except those wrongfully converted by the defendant, John D., as aforesaid, have been used in the construction of the defendant railway as it now exists, and for the payment of its debts and expenses.

Your orator further states that the net earnings of the defendant railway for the year 1885, as your orator was informed by the auditor thereof before the issuance to him of the arbitrary order of the defendant, John D., as aforesaid, amounted to the sum of thirty-four thousand four hundred and twenty-nine dollars and eighty-eight cents ($34,429.88), but your orator is unable to state the earnings for any other year for the reason before given, that he is not permitted to look into the books of said defendant, and can obtain no further information therefrom, as before stated. Your orator further states that certain citizens of the county of Howard, in the State of Arkansas, donated to the defendant railway about three hundred and twenty acres of land, situate at and contiguous to the town of Nashville, in said county, upon condition that said defendant railway should be extended to said town, and a depot located on the said land. This has been done, and the deeds to said lands have — executed and delivered to said defendant, John D., in his own individual name; but your orator states and charges the truth to be that said defendant received such title in trust for himself and your orator, according to their respective interests in the defendant railway, and not otherwise, and that said lands belong of right and in equity to said defendant railway. And your orator further states that many valuable improvements, including depot buildings, &c., and a large and commodious hotel, have been built upon said lands; that a large portion of said lands have been divided into blocks and lots, now forming a part of said town of Nashville, and

559 a portion of them sold by the defendant, John D., or bargained for sale (but what portion your orator is unable to say), and that all of said lands remaining unsold and the proceeds of those portions which have been sold or bargained for sale are properly and equitably assets of the defendant railway. Said lands are described as follows: The N. W. ¼ of the N. W. ¼; the N. E. ¼ of N. W. ¼; the S. E. ¼ of the N. W. ¼; the N. W. ¼ of the N. E. ¼; the N. E. ¼ of the N. E. ¼; the S. W. ¼ of the N. E. ¼; the S. E. ¼ of the N. E. ¼, in section 26, in township nine (9) south, in range 27 west, being the land known as the Rector place, exclusive of the lots sold previous to August 30th, 1883, out of the northeast quarter of the southwest quarter and the north half of the northeast quarter, as per deeds made by A. M. Rector of said Jan'y 21st, 1885.

And your orator further states that there are other lands belonging to said defendant railway, the deeds to which are in the name of the defendant, John D., but your orator cannot specifically describe and set forth the same for the reason before given, that he is denied access to the books of the defendant railway by the defendant, John D.

And your orator further states that the defendant, John D., heretofore made a contract with the Pan Electric Telephone Company, by which he has the exclusive right to the use of the instruments of the said telephone company along the line of the defendant railway in the States of Arkansas and Louisiana; but your orator charges the truth to be that said contract was made for the benefit of the defendant railway, though standing as the contract of the defendant, John D., with said telephone company.

Your orator is unable to state the terms and conditions of said contract otherwise than that it is largely beneficial to your orator, and the defendant, John D., for the reason before given, that he is denied access to the books of the defendant railway by the defendant, John D., as aforesaid. And your orator further states that there are many other things affecting his rights in said railway, but which he is unable to state in any satisfactory manner for the reason before given, that he is denied access to the books of the defendant railway by the defendant, John D., as aforesaid. Your orator further states that some time before his said purchase of two-thirds of the Alderman interest in the said Washington and Hope railway, and after the said Alderman and the defendant, John D., became the owners thereof, the capital stock of said railway had been increased from forty-five thousand dollars to one hundred thousand dollars, divided into shares of twenty-five dollars each, making in all four thousand shares, as he has hereinbefore stated, and that such was the capital stock of said corporation when your orator made such purchase; but your orator is unable to state when this increase was made, inasmuch as he fails to find any record thereof in the office of said secretary of state, and he is denied access to the books of said corporation (in which the same is recorded) by the secretary thereof, who has the same in his keeping and who is acting under the commands of the defendant, John D., as aforesaid.

Your orator further states that said four thousand shares of stock were all issued in the name of the defendant, John D., if in fact issued at all, who held them in trust for himself and said Al-
560 derman, and afterwards held them in trust for himself and your orator, when your orator made his said purchase; but your orator cannot positively say whether certificates of said stock or of any other stock were in fact issued, because of the fact that he cannot have access to the books of said corporation, wherein the proceedings in relation thereto are recorded; but your orator charges the truth to be that the said defendant, John D., in all transactions connected with this business, was the active agent and trustee, first of the said Alderman and afterwards of your orator, and that the directors of said corporation herein named, commencing with the Washington and Hope railway and ending with the defendant railway, recognized the defendant, John D., after he became interested as aforesaid, as the owner of all the properties of said corporation, for himself and as trustee, first for said Alderman and afterwards for your orator, with full powers to act in the premises as he might deem advisable for the welfare of the corporation; that the shares of stock appearing upon the books to belong to all of the directors, except your orator, were merely nominal, and were of no value to them except for the purpose of sustaining the corporate existence of the corporation aforesaid; that such proceedings were had by such directors from time to time as the defendant, John D., suggested were for the interests he represented, and that the various meetings of said directors were called and held upon request of defendant, John D., and at no time without such request. And your orator further states that he became a director in the defendant railway because of the request of the defendant, John D., and without questioning his motive, and voted and acted as such director just as said defendant requested him to do, and without inquiring as to the reasons for so doing.

This your orator did because of his perfect confidence in the honesty, integrity, good faith, and good judgment of his said brother, the defendant, John D., who is seven years older than your orator, and for whom your orator had always since his earliest childhood entertained the tenderest feelings of brotherly love, respect, and confidence.

Your orator in fact says and charges the truth to be that, although he is a director of said defendant railway and also a stockholder, owning one-third of all the properties of said railway, he is not permitted to look into nor inspect the books of said corporation; that his rights and interests in said corporation are denied, and he is arbitrarily ordered by the defendant, John D., to keep away from the property of said railway; that the defendant, John D., is converting the trust reposed in him as aforesaid by your orator to your orator's financial ruin; denies that your orator has any interest whatever in the defendant railway or in any of its properties, and, as your orator is informed and believes and so charges, boasts that he is in possession and that he will use the means in his hands to maintain his position, and that your orator is unable to maintain a

suit against him for want of means to employ counsel and defray the expenses necessary for that purpose, and has gone so far as to demand from your orator all which your orator has received
561 from other railroads, and, on account of your orator's refusal to comply with this demand, has threatened to take such action as would induce said railroads to withdraw said passes from your orator, and has caused the conductor on the defendant railway's train to demand and collect fare from your orator for a nurse in charge of your orator's infant child while going with your orator's wife on the train of said railway from Nashville to Washington. And your orator charges that said defendant, John D., by virtue of the power and authority which has been given to him by the directors of the defendant railway, and which they are powerless to withdraw or abridge, will be able to and will maintain his said wrongful and unrighteous position, and will be able to and will destroy your orator's interest in the defendant railway and render the same valueless, unless prevented from so doing by the powers inherent in and exercisable by this honorable court.

Wherefore, in consideration of the premises, your orator prays that an account be taken and stated by a master of this court of all the property of the defendant railway company, whether the same appear upon the books of said railway or to be ascertained by evidence, including all properties, whether real, personal, or mixed, which legally or equitably belong to said railway, whether held in the name of the defendant, John D. Beardsley, or otherwise, and whether acquired before or after the construction contract entered into by the directors of the defendant railway and the defendant, John D., as herein mentioned; and your orator be declared and decreed to be a tenant in common with said defendant, John D., in said defendant railway, and in all of said properties to have and to hold an undivided one-third thereof; that the president and secretary of the defendant railway company be required to issue and deliver to your orator certificates of stock for one-third of all the stock of the defendant railway, so far as the same has been completed as aforesaid, at the rate of twenty thousand dollars per mile, in shares of the par value of one hundred dollars each; that the defendant be declared and decreed to be a trustee for your orator in the construction contract entered into by said defendant and the directors of the defendant railway for the construction of said railway as aforesaid, and also in the contract made by said defendant with the Pan Electric Telephone Company as aforesaid, and that your orator's interest in each of said contracts and the benefits arising therefrom be declared and decreed to be a full one-third thereof, and that the master appointed to take and state the account between your orator and the defendant, John D., as prayed for herein, be empowered and directed also to state the respective interests of your orator and said defendant, John D., in and to the property, moneys, assets, profits, and benefits arising from said contract, and that the defendant be required to disclose and account for all moneys and property legally and equitably belonging to the defendant railway or your orator which

have been applied by him at any time to his own account or purposes and not already fully accounted for by him; that the defendant, John D., be declared and decreed as holding all the property purchased by or given to him
562 for the defendant railway, as hereinbefore specifically set forth, as a trustee for the use and benefit of the said railway, and that he be required to make a deed or deeds to all of said property to the party equitably entitled thereto and account for such portions thereof as he may have converted to his own use; that the credit of $4,732.50 in favor of the defendant, John D., upon the books kept by the auditor of the defendant railway, being the proceeds of the sale of the iron, &c., of the narrow-gauge railroad as aforesaid, be cancelled and charged back to him and put to the credit of the defendant railway; that the defendant railway be required to pay to your orator the sum of one hundred dollars per month for every month since the first day of December, 1883, for balance due him as salary to equal the amount drawn by the defendant, John D., for the revenues of the defendant railway as aforesaid; that a receiver be appointed to take charge and control of said defendant railway and all of its properties, and control and manage the same under the orders and directions of this honorable court during the pendency of this action and until the final decree may be rendered herein, and for such other and further relief as to the court may seem equitable and just and the nature of the cause may require, and that a writ of subpœna be issued, directed to the said John D. Beardsley and the Arkansas and Louisiana Railway Company, commanding them, at a day certain and under a certain penalty to be therein inserted, personally to be and appear before this honorable court, then and there to answer the premises and to stand and abide such order and decree therein as shall seem agreeable to equity and good conscience.

563 In the United States Circuit Court for the Eastern District of Arkansas. In Chancery.

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY and THE ARKANSAS AND LOUISIANA RAILWAY COMPANY.

The defendant, John D. Beardsley, saving and reserving exceptions to the many errors and insufficiencies in the complainant's bill contained for his separate answer unto so much thereof as he is advised is material for him to answer, says it is true that the several corporations mentioned and described in said bill were incorporated at the time and in the manner alleged, and he supposes that Exhibits "A," "B," "C," "D," "E," and "F" to said bill were correct copies of the articles of incorporation of said several corporations; but he alleges that no stock was ever issued in pursuance of the subscriptions contained in the articles of association of the Arkansas and Indian Territory Railway Company or of the Ar-

kansas and Louisiana Railway Company, nor was any part of said stock subscriptions ever paid in save what was paid by this respondent for the purpose of securing the charter. After the organization of said corporations and the purchase by them respectively and successively of the property and franchises of the Washington and Hope Railway Company, as set out in said bill, it was agreed that certain stock was to be and the same was in fact issued by the Arkansas and Louisiana Railway Company to the stockholders of the Washington and Hope Railway Company, as will herein be fully shown.

It is likewise true that the several sales and transfers of the property, rights, and franchises of said corporations alleged in said bill to have been made were made, and that the property and franchises of said several corporations were finally vested, by virtue of said sales and transfers, in respondent's codefendant, The Arkansas and Louisiana Railway Company; and defendant herewith exhibits full and true copies of the records and proceedings of said incorporations in relation to said sales and transfers, marked respectively in alphabetical order from A to E inclusive.

And he alleges that it was, among other things, agreed by and between the Washington and Hope Railway Company and the Arkansas and Indian Territory Railway Company, in the
564 negotiations for the purchase by the latter of the property and franchises of the former company, that the vendee would issue to the vendor one hundred thousand dollars of its paid-up capital stock, which was to be delivered to the stockholders of the vendor in lieu of the stock held by them in said corporation at the time of said sale, and said arrangement was assented to in writing by each and all of the stockholders of said company, as appears by reference to Exhibit "C" hereto.

And the same agreement was made by and between the Arkansas and Indian Territory Railway Company and respondent's codefendants, The Arkansas and Louisiana Railway Company, upon the purchase by the latter of the property and franchises of the former company, and was assented to by the stockholders of the former company, as will be seen by reference to Exhibit E hereto.

That the object and intention of said agreements was that each of the stockholders of the vendor corporations should obtain in the vendee corporation an amount of stock equal to what he had theretofore held in the vendor corporation, and upon the consummation of the respective sales aforesaid each of the stockholders of the vendor became entitled to an amount of stock in the vendee equal to what he had previously held in the prior corporation, and under said arrangements each stockholder in the Washington and Hope Railway Company acquired the right to the like amount of stock in the Arkansas and Louisiana Railway Company.

Respondent further says that his codefendant has issued one hundred thousand dollars of paid-up stock under and in pursuance of the aforesaid agreement, as will be hereinafter more fully shown, and that it has issued no other stock except what was issued to respondent as hereinafter stated.

Defendant, further answering, says: On the 10th day of Septem-

ber, 1879, he entered into a contract with the Washington and Hope Railway Company to construct a narrow-gauge railroad from Washington to Hope, the terminal points thereof Under the terms of said contract respondent was to construct, temporarily, a tram road, and was within four years to replace the same with iron rails, and in consideration thereof the directors agreed that they would, upon the completion and acceptance of said road by them, procure the stock of said company to be transferred to respondent, except sufficient to qualify a legal directory under the provisions of the charter, and would obtain and deliver to him the sum of ten thousand dollars in the notes or obligations of responsible and solvent parties, one-half thereof payable to respondent ten days after the completion and acceptance of said road by the directory and the residue one year thereafter, which is herewith filed, marked "E 2."

That some time after he had entered into said contract he associated with him in said enterprise the said Vinton Alderman, who was and still is a citizen of Ohio. It was agreed between them that they should each contribute to the expense of constructing and completing said road, and upon the receipt of the stock thereof from the directory that it should be divided between them equally.

In the latter part of the year 1879, or early in 1880, re-
565 spondent completed the laying of said track, the greater part thereof being constructed with wooden rails or stringers. It soon became apparent that the road could not be operated with such material without constant expense and outlay resulting from the rapid wearing out of the wooden rails, and during said year respondent procured iron rails, with which he relaid said track. Soon after the relaying and completion of said track as aforesaid the road was formally accepted by the directory. A copy of said resolution is filed, marked Ex. "F."

That — this time the capital stock of said corporation was forty-five thousand dollars, and upon the completion and acceptance by said company of said road as aforesaid the directors caused the same to be valued by a committee by them appointed for that purpose. A copy of said resolution is herewith filed, marked Ex. "G." The same was appraised at one hundred thousand dollars, and thereupon the stock of the company was increased to that sum, and paid-up certificates of said stock were issued to respondent for himself and the said Alderman, save a few shares reserved and issued to members of the directory for the purpose of rendering them eligible as directors. Said road was completed as aforesaid before the complainant came to Washington, and it is not true, as alleged, that he participated in the construction thereof.

Defendant further represents that the said Alderman had contemplated removing to Hempstead county, in this State, but in the year 1881 he concluded to remain in Ohio, and thereupon became anxious to dispose of his stock in the Washington and Hope Railway Company and several times wrote to respondent asking him to purchase the same, which he declined to do for the reason that he did not have the means necessary to make the purchase. The road was in debt and the earnings thereof were at the time very light;

but about the — day of ——, 1881, defendant learned that the said Alderman was proposing to sell his stock to the president of the Texas and St. Louis Railway Company, which was a corporation constructing a narrow-gauge railroad in this State to be operated in competition with the St. L., I. M. & S. R'y, upon which road the Washington and Hope Company was largely dependent.

Defendant knew said company and the president thereof could command large capital, and was fearful that if he acquired said stock it would prove prejudicial to respondent's interest. Wherefore and solely in consideration of said information he wrote at once to the said Alderman proposing that he would purchase his stock for twelve thousand dollars if he would sell it to him on a credit. His proposition was accepted by the said Alderman, and he thereupon became the purchaser and owner of said stock.

And the defendant denies that he made said purchase or that he ever at any time had any correspondence with the said Alderman in regard to the purchase of said stock at the request or the solicitation of the complainant, or that he ever at any time prior or subsequent to said purchase had any conversation or consultation, agreement or understanding, with complainant with regard
566 thereto, and if complainant himself had any correspondence with the said Alderman on the subject respondent is not aware of it. He, however, does not believe that he had, or that he ever thought of purchasing said stock.

He denies that he wrote to complainant requesting him to come from California and take an interest in said road, or that complainant came to Washington for that purpose at defendant's request.

Further answering, respondent says in the fall of 1881 he received a letter from the complainant, written in California, stating that he was coming East and requesting respondent to meet him in St. Louis. Respondent and complainant had not met for several years, and, desiring to meet his brother again, he went to St. Louis at the appointed time and learned from him that he was going to New York city in furtherance of some scheme or enterprise which he then had on hand. Nothing whatever was said or intimated at said meeting in regard to complainant's becoming in any manner connected with said road. Respondent advised him of the difficulties he had been laboring under for the want of more means, and he volunteered to express the belief that he could procure for respondent *at* the money he needed in New York. Having made fruitless efforts in that direction himself and failed in the accomplishment of his object, respondent very seriously doubted complainant's ability to effect anything, but told him he would be glad if — could do so. After he arrived in New York complainant wrote to respondent for information about the road, the country, &c., which was sent to him; but, as he expected, nothing ever came of it.

And he denies that the complainant went to New York, as alleged, at his suggestion or solicitation, or that there is any foundation for the allegation in that behalf in said bill other than the facts hereinabove stated.

Defendant further represents that soon after complainant had

gone to New York in the fall of 1881, as hereinbefore alleged, he received a letter from him stating that he had not succeeded in accomplishing anything in New York, referring to his personal interests, and was out of money and requested defendant to give him employment. Respondent answered his letter declining to employ him. Soon thereafter he received another letter from complainant importuning him to employ him and proposing to work for seventy-five dollars per month for the sake of obtaining a support for his family. Respondent did not wish to employ complainant, because the means at his command *was* extremely limited and he did not need his services, and besides he felt it better for other reasons that he should not do so, but he could not under the circumstances resist his appeal and he wrote to him to come to Washington at once, which he did and went to work at the aforesaid salary proposed by himself and rendered efficient service. He continued in said service at said salary until the 1st day of December, 1883, when respondent advanced his salary to one hundred dollars per month. It is not true, as alleged, that complainant objected or protested
567 against the amount at which his salary was fixed; on the contrary, he thanked respondent for advancing it as aforesaid.

Soon after complainant came to Washington and entered into the service of the defendant as aforesaid, and after he learned that defendant had purchased the stock of Vinton Alderman and owned the greater part of the stock of the Washington and Hope Railway Company, he began to importune defendant to sell him a part of said stock, representing that he still had interests in California from which he expected to realize money with which he could pay for the same. Defendant did not wish to sell him the stock or believe that he would be able to pay for the same, but finally, upon his urgent solicitations, consented to sell him thirty-three thousand two hundred and fifty dollars of said stock for the sum of eight thousand dollars, and inasmuch as he was paying interest on his purchase of stock from the said Alderman and was realizing no dividends thereon, he thought it was but just that complainant should pay him interest from the date of said purchase, and so stipulated. It was further agreed that the stock was not to be delivered to complainant until he should have paid therefor. On the day after he had agreed to make said sale defendant wrote and delivered to complainant the memorandum copied in his bill. Said sale was not made in pursuance of any previous agreement or under any other circumstances or with any other understanding than as herein stated. That from that time until some time in the month of January, 1886, when complainant became offended with respondent, the matter of said sale was never mentioned or alluded to between them. Complainant did not during all said time pay or offer to pay a cent on said purchase. And respondent knowing that he had failed to realize anything from his alleged gold mine and without means to pay for the same supposed he had abandoned it and had himself ceased to think of it.

That during said period complainant was in the employment of

defendant upon a salary, and while it is true that he rendered valuable and efficient service in the construction and operation of said road it was no more than was rendered by the other employees in their respective stations, and is usually rendered by persons similarly employed on other railroads.

While it is true that complainant and defendant got along harmoniously during said time and frequently consulted together as to such matters concerning the work of constructing and operating said road as is usual and necessary for persons engaged in such duties to do, it is not in any manner true that they ever consulted together as persons jointly interested in the property or stock of said company, nor was it ever understood or agreed in the remotest degree either by complainant or this respondent that complainant's interest in said property was one-third thereof and defendant's interest two-thirds, as alleged in said bill. Respondent never before the month of February, 1886, when such a claim was for the first time set up by complainant as hereinbefore stated, heard, or thought of such a state of affairs as that alleged.

It is not true that respondent consulted with complainant as
568 a joint owner or as one jointly interested in said propety as to the policy of extending said road or widening the gauge thereof. It was a matter of much public concern at Washington, where the principal office of said company is located, to have the road extended, and such extension had been contemplated by respondent and the directors of said company long before complainant came to Washington. The delay therein was only caused by want of the resources necessary to prosecute the work. In the summer of 1882 respondent ascertained that the St. Louis, Iron Mountain and Southern Railway Company would aid him in extending the road, and it was at once determined to proceed with the extension thereof. This purpose was the subject of frequent conversations and consultations among the directors, by whose action and co-operation the changes that were effected in the organization of the corporation, with the view to such extension, were made. Complainant was not a member of the directory and was not consulted by the respondent or any one else, so far as he knows, as to the policy of the extension. As to the matter of the widening of the gauge of said road it was determined upon by respondent, as he now remembers, during an interview with R. S. Hays, the first vice-president of the St. Louis, Iron Mountain and Southern Railway Company, at St. Louis, in the summer of 1882, and when complainant was at Washington, Arkansas, several hundred miles away.

Further answer, defendant says it is not true that he, acting for himself and complainant, entered into a construction contract with his codefendants, and he states the facts in that behalf to be that after the acquisition by the Arkansas and Louisiana railway of the property and franchises that had formerly belonged to the Washington and Hope Railway Company, and after it had been determined that said road should be extended the directors looked exclusively to respondent for carrying said purpose into effect, and

in order to enable as well as to induce him to do so a construction contract was entered into between respondent and his codefendant, the terms of which will presently be fully set forth; that prior to the making of said contract respondent was a director in said company, and knowing that he could not lawfully enter into contract with the company while holding that position he withdrew from the directory, and the complainant, who was then and at the time said contract was entered into a director in said company, well knew and understood the purpose for which respondent withdrew from the directory.

That on the 22nd day of May, 1883, a contract was entered into by and between respondent, acting solely and exclusively for himself and his codefendant, by the terms of which he undertook and agreed to change the gauge of said road, to lay the same with a heavy iron rail, to build depots, equip the road with sufficient rolling-stock, and to extend the same, and to assume and pay all debts and liabilities of said company, amounting to near seventy thousand dollars, in consideration of which said company agreed to convey to respondent the lands donated to it by the State, amounting to about twenty thousand acres, to issue to him stock to the amount of $10,000
569. per mile on that part of the line between Washington and Hope and $20,000 per mile on the residue of the road, said stock to be issued and delivered to respondent as said road was completed and accepted in sections of one mile, and first-mortgage bonds in the sum of fifteen thousand dollars per mile to be issued and delivered to him as said work progressed and was completed and accepted in sections of five miles, and to lease said road and the revenues and income thereof to respondent for the period of five years. A copy of said contract is herewith filed, marked Exhibit "H."

As before stated, complainant was at the time said contract was entered into a director in said company, some shares of stock having been issued in his name in order to qualify him to act in that capacity, and he was present at the time said contract was entered into, had full knowledge of the terms thereof, and voted upon and in favor of the resolutions adopted by the board authorizing and ratifying the same.

Respondent further represents that he made arrangements with the St. Louis, Iron Mountain and Southern Railway Company for money and material with which to extend and make the changes in said road contemplated in his contract with his codefendant, and as security for said money and material he hypothecated the stock and bonds issued to him by his codefendant and assigned for the benefit of said company a half interest in said construction contract to one George C. Smith, as shown by the endorsement on Exhibit H hereto.

There has been issued to respondent, under the provisions of said contract, one hundred thousand dollars of the stock of said company and two hundred and forty thousand dollars of bonds, all of which have been hypothecated to the St. Louis, Iron Mountain and Southern Railway Company, as hereinbefore alleged, and with the money

and material so obtained respondent had extended said road to Nashville, in Howard county, Arkansas, has converted the same into the standard gauge and has replaced the iron on said track with a heavy and better quality of iron.

And respondent alleges that at the time said contract was entered into between him and his codefendant, and during all the negotiations for means with which to carry on said work, and during the progress of said work there was never in his mind any thought of associating complainant with him in said contract, nor was there ever the slightest intimation on complainant's part that he had or expected to have any interest whatever therein. Complainant well knew that he could not legally, being a director in said company, be a party personally to said contract. He knew that respondent had withdrawn from the directory in order that he might be enabled lawfully to enter into said contract; and he likewise knew that if it had been the intention to associate him with respondent in the contract there had been no obstacle to his withdrawing from the directory as respondent had done and becoming a party thereto.

And respondent further represents that he is and has since the execution of said contract been in the possession of said road
570 as lessee thereunder; that he had administered the revenues thereof with great economy, applying every dollar of the earnings to the construction and equipment of the road and property, saving a small salary of two hundred dollars per month, which he has allowed himself for the support of his family; that it is not true that he has used the earnings of the road for the payment of the travelling expenses or any other expenses of his family, or in building or adding to his residence; or that he has ever at any time overdrawn the amount of said salary or diverted the earnings of the road or any part thereof from the purposes aforesaid, but, on the contrary, he has much of the time withdrawn less than his salary.

He has likewise caused an account to be kept of the earnings and of the expenditures in constructing, equipping, and operating the road, and the books now show correctly and in detail all of the earnings and disbursements of the road, and on what account the same were made and the cost of each addition to said road since it has been in respondent's possession, and any accountant can obtain within a very short time an exact knowledge from his books of the past and present financial condition thereof. He has been thus particular in keeping said accounts and in separating the same from his personal and family expenditures because he desired to know at all times the exact financial condition of the road, and deemed a rigid economy in the administration of its finances as essential to the successful performance of his contract with his codefendant and with its predecessor, the Washington and Hope Railway Company, and not because he doubted his right to apply the earnings as he might see fit under the terms of his several contracts with said companies, having due regard for the claims of creditors

and those parties who were furnishing him the money and material with which to carry on said work.

It is not true that respondent has caused any entries either of debit or credit of the sum due the said Vinton Alderman for the purchase of his stock to be made in the books of said company; said account, as well as all the other accounts referred to by the complainant in said bill, are entered in respondent's private books of account. It is true that respondent has paid the said Alderman about the sum of five thousand five hundred dollars of said indebtedness. Said payments were not made out of the earnings of the road except about $2,900, which has been paid out of the earnings since said road has been held by him as lessee, and respondent does not and has never doubted his right to so apply said earnings. It is not true that the credit of forty-seven hundred and thirty-two dollars and fifty cents realized from the sale of said iron, fish-plates, spikes, and cars was entered upon the books of said company or that said material ever belonged to the Washington and Hope Railway Company. Respondent purchased said material from the county of Shelby, in the State of Tennessee, before he had entered into the contract with the said company, and paid for the same with his own means. He had never charged the same to said company or received a credit therefor. Said material belonged to him, and the proceeds of the sale thereof was properly entered in his books
571 of account. The allegations of said bill as to the assets of the Washington and Hope Railway Company are not true. The alleged bonus notes of six thousand dollars were a part of the consideration enuring to respondent under his contract to construct said road. Said notes had been endorsed and negotiated for the purchase of material that entered into the construction of said road, and part of them had been paid when complainant came to Washington. The sum realized from the sale of said cars, spikes, bolts, and other material, amounting to —— dollars, was in part paid to the St. Louis Bolt and Iron Company for the purchase-money of said material. The amount realized from the sale of said lands was about five thousand dollars, and was paid out for the rails. Said lands and the proceeds thereof belonged to respondent, though it is true that he applied the same as alleged to the construction of said road and the payments of debts thereby incurred, and there were no net earnings derived from said road in the year 1882. All of the earnings for said year had been consumed in the repairs of the road and its equipment. It is not true that the citizens of the county of Howard donated said lands at Nashville to respondent's codefendant or that he holds said lands or any other lands in trust for said company or for complainant or that either of them has any interest legal or equitable in any lands held by respondent; nor is it true that respondent made the alleged contract with the Pan Electric Telephone Company for the benefit of said company or that it had or has any interest whatever in said contract. The truth in that behalf is that respondent purchased four instruments from said telephone company for which he paid thirty-three dollars apiece, and erected one of them at Washington and one of them at Nash-

ville. He is further advised that as to said matters wherein complainant charges that defendant has appropriated the property of his codefendant, said company is capable of and is the proper party to seek redress, and doubtless would have done so long since if there had been any foundation for the charge made by complainant, for all of said transactions and dealings have been done openly, and the directors of said company have had full knowledge thereof.

Defendant further says that in the month of February, 1886, and after complainant had begun to assert his claims to an interest in said road and property, he began to threaten defendant with litigation and employed attorneys to bring suit against defendant, and in consequence thereof defendant did discharge him from his employment as alleged, and when he demanded to see the defendant's private books and accounts he denied him access thereto as alleged and as he believes he had the right to do. It is also true that defendant requested the secretary of his codefendant not to permit him to have the records of the company, not that he feared for complainant to see what was contained in said books and records, but because he apprehended that complainant would attempt to make an improper use of the same. It is also true that defendant did demand that complaint surrender the passes that had been procured for him by respondent from other railroad companies in con-
572 sequence of his connection with said road, and upon his refusal to do so warned him that if he attempted to use them he would advise the railroad companies by whom they had been issued.

Defendant did this because it is usual in such cases for the recipient of passes to surrender the same, and it would have been an improper and dishonest abuse of the confidence of such companies to have permitted complainant to continue to use said passes as complainant well knew, but it is not true as was well known to complainant that respondent ordered the conductor to demand and collect fare for a nurse in charge of complainant's child; on the contrary, defendant instructed the conductor to pass complainant and all members of his family without charge, but not to permit him to pass other persons. The only foundation for such charge, which is so colored as to amount to a deliberate and gross misrepresentation of complainant, is the fact that the conductor collected the fare and was by defendant as soon as he learned the circumstances ordered to and did offer to refund it to complainant, all of which was explained to and was known by complainant prior to the institution of this proceeding. Defendant, further answering, alleges that the original construction and the extension of said road and the change in the gauge thereof has been effected by and through his efforts and the negotiations by him set on foot for the purpose of raising the means necessary to accomplish that result. While he has at all times had the full and hearty co-operation of the directors in whatsoever he thought necessary to be done by them, said road has been constructed and equipped by his sole and unaided efforts.

He has at all times exercised absolute and unqualified control of

said road and everything appertaining to it and never at any time recognized in complainant any right to be consulted as to the management thereof. The same is true as to all the negotiations for money and material for equipping and extending said road, and complainant has had full knowledge of all the facts and has acquiesced in and by his conduct recognized and acknowledged respondent's complete and exclusive control of said road and the rights claimed and exercised by him as hereinbefore alleged.

It is not true that respondent was ever recognized by the directors of the Washington and Hope Railway Company or of his codefendant as a trustee for the complainant in respect of said property or the construction contract, or that any officer of either of said companies ever heard of the claims advanced by him in that respect or of any claim on his part of an interest of any kind in said property until a very short time prior to the institution of this proceeding, and respondent does not believe that complainant himself entertained such views until a very short time prior thereto. If he did he never at any time by word or act manifested it; and it is a fact well known to all who know the complainant that he is of an aggressive temper, disposed to have his way in all matters with which he is connected, and ready on all occasions to assert what he deems to be his rights; and while, as hereinbefore alleged, respondent did not deem it necessary to do so, he has for the reasons set forth so conducted all the business connected with said road
573 so as to keep it separate from his private interests and has had the books and accounts so kept that they furnish a full history of all the transactions in regard thereto, and if complainant were entitled to the rights that he asserts they have been fully preserved and protected and are not in any manner or degree impaired by respondent's management of said property; but respondent denies that he has or ever had any interest in said property or in the contracts made by respondent with said company, and he is advised that such right as he might have acquired to the stock which respondent agreed as hereinbefore alleged to sell him by paying the price agreed upon between them are stale and barred by lapse of time and the failure of the complainant to perform the condition upon which he was to acquire said stock, and he here pleads the staleness of complainant's claim in bar of the relief sought in said bill.

And having fully answered so far as he is advised is material for him to answer defendant prays that he be hence discharged, with his reasonable cost, and he will ever pray, &c.

574 In the United States Circuit Court for the Eastern District of Arkansas. In Chancery.

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY *et al.*

The defendant, The Arkansas and Louisiana Railway Company, saving and reserving exceptions for the many errors and insuffi-

ciencies in said bill contained for its separate answer unto so much thereof as it is advised is material for it to answer, says: The allegations in said bill and in the answer of its codefendant in regard to the corporate organization of this defendant and of the acquisition by it of the property and franchises of its predecessors are true.

It is likewise true as alleged in the answer of its codefendant in regard to the construction contract between the defendant and its codefendant, and the terms of said contract are correctly set out in said answer and the exhibits thereto.

Complainant was not a party to the aforesaid contract for the construction of its road, and had no interest therein so far as its officers or directors knew at the time said contract was entered into or now know.

575 Its dealings had been altogether with its codefendant, who was ostensibly acting for himself alone. And while this defendant had no knowledge as to the truth of the allegations of the bill as to the purchase by complainant of the stock of this defendant from its codefendant, it denies that either he or the said John D. Beardsley is the owner of any direct interest in said road or otherwise than as stockholders of this company.

And defendant, further answering, alleges that the promoters and directors of the Washington and Hope Railway Company and of its successors, including this defendant, were citizens of Washington, in Hempstead county, Arkansas; they are engaged in business at that place, and the most of their property is located there and in the vicinity. They had and still have a vital interest in the construction and extension of said railway under the terms and provisions of the several charters taken out as aforesaid. While it is true that they, acting in their capacities as directors, agreed and contracted with their codefendant to give him the greatest part of the stock of said corporation and to place him in possession of said road as lessee as a consideration to induce him to undertake the construction and extension thereof, nevertheless it was contemplated and provided in said contract that the organization of said company was to be maintained, and that sufficient of the stock of said company was to be reserved for the purpose of qualifying a legal directory in order that this defendant might and should retain the means and capacity to compel the performance by its codefendant of his contract; and this was done to the end that the object they had in view, viz., to secure the construction, equipment, and maintenance of said road, might not be defeated; and so defendant says it is not true as alleged in said bill that the maintenance of the corporate organization is merely formal and nominal, or that said road became vested in said defendant either severally or as a tenant in common with the complainant.

Defendant further alleges that its codefendant, the said John D. Beardsley, is in the possession of said road and property as its lessee, under and in pursuance of the terms of the aforesaid contract, and he has since the execution thereof made the changes therein and the extension thereof as alleged in his answer herein.

That he agreed and undertook with this defendant to construct

all its line of road, and is, as defendant is informed, negotiating for the means to continue the extension thereof.

This defendant believes and avers that its codefendant has managed said property honestly and faithfully and to the best advantage, and has utilized the earnings of the road in the construction, equipment, and improvement thereof. And it believes and alleges that to remove — from the control and management of said property would prove injurious if not disastrous to the interest of all parties concerned and particularly to the interest of this defendant.

And having answered as fully as it is advised is necessary
576 for it to do, defendant prays that its rights may be protected and preserved during the progress of said cause.

577 In the United States Circuit Court for the Eastern District of Arkansas.

PAUL F. BEARDSLEY, Complainant,
—
JOHN D. BEARDSLEY and ARKANSAS & LOUISIANA R'Y CO., Defendants. } Replication.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefits and advantages of exception which may be had to the manifold insufficiencies of the answer of the defendant, John D. Beardsley, for replication thereto says that he will aver, maintain, and prove his bill of com-
578 plaint to be true, certain, and sufficient in the law to be answered unto, and that said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things the repliant is and will be ready to aver, maintain, and prove as honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

JONES & MARTIN,
Sol's for Complainants.

(Endorsed:) Filed April –th, 1886. Ralph L. Goodrich, clerk.

In the United States Circuit Court for the Eastern District of Arkansas.

PAUL F. BEARDSLEY, Complainant,
v.
JOHN D. BEARDSLEY and ARKANSAS & LOUISIANA R'Y CO., Defendants. } Replication.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefits and advantages of exception which may be had to the manifold insufficiencies of the answer of the defendant, The Arkansas and Louisiana Railway Com-

pany, for replication thereto, says that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that said answer of the said defendant is uncertain and insufficient to be replied unto by repliant without this; that any other matter or thing whatever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things the repliant is and will be ready to aver, maintain, and prove as this hon. court shall direct, and humbly prays as in and by his said bill he hath already prayed.

579 And on April 3rd, 1886, the following proceedings were had, to wit:

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY and ARKANSAS AND LOUISIANA RAILWAY COMPANY. } 811.

On this day came the complainant, by Jones & Martin, his solicitors; also came the defendants, by A. B. Williams, J. D. Conway, and J. M. Moore, their solicitors; and thereupon, on the motion of the defendants, it is by the court ordered that the defendant, John D. Beardsley, be, and he is hereby, authorized to enter into negotiations for money to complete or extend the Arkansas and Louisiana railway, and, if the same can be obtained upon fair and reasonable terms, to enter into contract therefor, and to that end he is authorized to provide for the securing of the same by the execution of a mortgage on the railroad, the property, and the franchises of the said company or the pledge of the stock and bonds thereof, or both, as may be necessary and as is usual in such contracts; and upon the execution of such contract the same shall be submitted to the court for approval, and, if it is by the court approved, it shall be binding on all the parties to this cause and not otherwise, and all additional orders that may be necessary in executing and carrying said contract into effect will thereupon be entered.

580 Articles of agreement entered into on this 10th day of September, A. D. 1879, by and between the Washington and Hope Railway Company of Hempstead county and the State of Arkansas, party of the first part, and J. D. Beardsley, of Cairo, West Virginia, party of the second part.

The Washington and Hope Railway Company, having constructed a road-bed for a narrow-gauge railway from Washington to Hope, in said county of Hempstead and State of Arkansas, and being desirous of having the same completed and operated, to that end hereby agree and contract with J. D. Beardsley, party of the second part, to procure and hold in trust for him, the said Beards-
581 ley, and for such persons as he may associate with him, all of the stock in said Washington and Hope Railway Company, held and owned by any person whomsoever, which said stock

shall be held by the board of directors of said Washington and Hope Railway Company in trust for the use and benefit of said J. D. Beardsley and his associates until he shall have completed said Washing- and Hope railway and made the same a first-class narrow-gauge railroad, when said stock shall vest absolutely in and become the property of said J. D. Beardsley and his associates or their assignees.

In the meantime, under the conditions hereinafter expressed and until the forfeiture made by said J. D. Beardsley and others according to the conditions hereinafter recited, said trustees shall collect and turn over to said J. D. Beardsley and his associates all of the dividends, issues, and profits upon said stock arising from the operation of said road:

Provided, that in the transfer of said stock a sufficient quantity of stock shall be retained by at least four members of the present board of directors of said Washington and Hope Railway Company to qualify them to hold the position of directors on said company; and provided further, that any of the stockholders may retain their stock by promptly paying up the remainder of said stock.

And it is further agreed that said party of the first part shall procure personal obligations of citizens who, in the opinion of the board of directors, are solvent, obligating themselves to pay to said J. D. Beardsley the aggregate sum of ten thousand dollars ($10,000), one-half of which sum shall be due and payable ten days after said railway shall have been completed, ironed, and accepted by the board of directors as a first-class narrow-gauge railway, which completion shall not be beyond four years from the date hereof, and the other half shall be due and payable one year thereafter.

The said J. D. Beardsley agrees and contracts for himself and his associates and their heirs and assigns that he or they will at once proceed to put upon the road-bed of said Washington and Hope railway ties suitable for a first-class narrow-gauge railway, said ties to be of either white or post oak timber and not less than — feet long and not less than — inches in width and not less than — inches in thickness, and to be laid not more than — inches from center to center of said ties on an average, and that he or they will put wooden rails upon the same and securely spike them to said ties and will use all possible diligence in getting said road ready for the transportation of freight and passengers.

He also undertakes and obligates himself and others as aforesaid to provide said road with sufficient rolling stock to transfer promptly all freight and passengers offering for transportation, and he guarantees prompt transportation of freight and the transportation of passengers within one hour from Washington to Hope or from Hope to Washington, inclusive of necessary stoppages, and he further obligates himself to run at least one passenger car daily each way in close connection with the passenger trains on the St. Louis, Iron Mountain and Southern railway.

Said J. D. Beardsley further obligates himself as aforesaid
582 to construct proper crossings, according to law, at all points where public roads shall cross the line of said Washington

and Hope railway, and to build a depot building at Washington sufficient for the storage and safe keeping of all freight committed to the care of said road; and, further, that said J. D. Beardsley and his associates shall be answerable and responsible to all persons who may sustain damage from any cause whatever arising out of the operation and running of said railway, whether operated by steam or otherwise.

It is, however, distinctly understood and agreed by and between the parties hereto that the putting down of wooden rails is a temporary arrangement, and that said wooden rails shall be replaced with iron rails of not less than twenty pounds weight per yard, and that said J. D. Beardsley hereby covenants and agrees to replace said wooden rails as rapidly with iron rails as aforesaid.

It is believed that this may be done in two years from the date of this contract, but if the said party of the second part should find it impracticable to iron the whole of said road within two years the party of the first part agrees that if one-third of the same is laid with iron rails within two years from the date of this contract that then, at the end of said two years, the said party of the first part will grant an extension of one year to said J. D. Beardsley, and if at the expiration of three years two-thirds of said road shall be laid with iron as aforesaid, the party of the first part shall grant the party of the second part another extension of time for one year, in which time said road shall be completed with iron as aforesaid, with all necessary switches, turn-tables, depots, &c., and shall be equipped with one good six-ton locomotive and cars necessary to transport all freight offering for transportation with promptness, and also at least one good passenger coach for the transportation of passengers, and that at least one passenger train shall be run each way each day in close connection with the passenger trains on the St. Louis, Iron Mountain and Southern railway. It is also distinctly understood and agreed between the parties hereto that if at the expiration of two years from the date of this contract said J. D. Beardsley and others shall have failed to iron one-third of said road as above provided, then and in that event it shall be at the option of said party of the first part to declare this contract at an end and without further notice to take immediate possession of said road and equipments, and by said forfeiture all the property and estate which said J. D. Beardsley and others may have acquired in said road by virtue of this contract shall revest in and become the absolute property of said company as originally organized, and if at the end of three years from this date two-thirds of said road shall not have been ironed as hereinbefore provided, then it shall be at the option of the party of the first part to declare this contract at an end, and all the rights and property of said J. D. Beardsley and others shall vest absolutely in and become the property of said party of the first part as originally organized, and they may take possession of the same without notice to said Beardsley and his associates, and if at the end of four years from the date hereof the said party of the second part shall not have completed the entire length of said road, with iron rails,
583 switches, turn-tables, depots, rolling stock, and other equip-

ments, as hereinbefore provided, as a first-class narrow-gauge railway it shall be at the option of party of first part to declare this contract at an end, and they may without further notice take possession of said railway, and all the property, rights, and estate which said party of the second part may have acquired by virtue of this contract shall vest in and become the absolute estate of the party of the first part as originally organized: Provided, however, and it is hereby distinctly understood and agreed, that said party of the second part shall have the right forthwith and shall remove the iron rails, spikes, and locomotive, if there be one, from said railway; but should the said party of the first part desire to purchase said iron and locomotive they shall have the right to take the same at the then market value of such iron and spikes and the freight thereon, and for the locomotive, if there be one, at the maker's price at the time, less a fair allowance for use and wear, and if said prices cannot be agreed upon they shall be ascertained by arbitration.

And the party of the second part further covenants and agrees that in the event of his failure to put down the rails as fast as hereinbefore provided he will not attempt to prevent or obstruct the parties of the first part in taking possession of the road and rolling stock, and that he will not construe the title to the iron and locomotive to justify him in holding the road or delaying the delivery thereof, but that if the parties of the first part should not wish to purchase said iron, spikes, and locomotive, then that he will remove said iron and locomotive, if there be one, within one week after receiving notice so to do, leaving the road-bed and ties and wooden rails and all other rolling stock still upon said road and in good condition.

In testimony whereof W. H. Carruth, as president of the Washington and Hope Railway Company, and Robert B. Williams, as secretary of the same, have, by order of the board of directors of said company, hereunto set their hands and affixed the seal of said company on the part of the party of the first part, and J. D. Beardsley, for himself and those he may associate with him, has hereunto set his hand and private seal on the part of the party of the second part.

Signed and sealed in triplicate on this the day and date first above written, at Washington, Ark.

W. H. CARRUTH,
President W. & H. R'y Co.

Attest: R. B. WILLIAMS,
[SEAL.] *Secretary W. & H. R'y Co.*

J. D. BEARDSLEY. [SEAL.]

584 WASHINGTON, ARKANSAS, *March 7th*, 1882.

This being the day fixed by the by-laws of this company for a regular meeting of the board of directors thereof, the board met at the office of A. B. & R. B. Williams, in the town of Washington, in the county of Hempstead, in the State of Arkansas.

Present: W. H. Carruth, president; R. B. Williams, secretary; Thos. H. Simms, treasurer; J. D. Beardsley, superintendent, and Directors W. P. Hart, A. B. Williams, H. B. Holman, J. K. Jones, and J. D. Conway.

The following, amongst other, proceedings were had, to wit: * * *

On motion of Director A. B. Williams, the following resolution was unanimously adopted, to wit: Whereas a committee appointed by the board of directors has examined the road-bed, tracks, culverts, bridges, turnouts, rolling stock, &c., of the Washington and Hope railroad, and has reported thereon:

Therefore resolved, That it is the sense of this board that said road has been completed according to the contract entered into with J. D. Beardsley, and that — road was so completed on the 1st day of January, A. D. 1881, and it is now received by this board as of that date.

585 Memorandum of an agreement made and entered into this the 18th day of September, A. D. 1882, by and between the Washington and Hope Railway Company, a corporation organized and existing by virtue of the laws of this State, party of the first part, and the Arkansas and Indian Territory Railway Company, a corporation organized and existing by virtue of the laws of this State, party of the second part.

586 Whereas the party of the first part owns and operates a line of railroad between the towns of Washington and Hope, in Hempstead county, in said State, and the party of the second part has been organized and incorporated for the purpose of constructing a line of railroad from the town of Washington aforesaid, in a northwesterly direction to the line between this State and the Indian Territory, and the said railroads will form continuous and connecting railroads with each other.

Whereas the party of the first part is authorized by the laws of this State to sell and the party of the second part to purchase and operate the line of railroad owned by the party of the first part, and it is believed a sale will be beneficial to the stockholders of each corporation and to the public: Now, therefore, this agreement witnesseth that the party of the first part, in consideration of the issue to it by the party of the second part of one hundred thousand dollars of its paid-up capital stock and of the agreements of the party of the second part hereinafter contained, have granted, bargained, and sold, and doth by these presents grant, bargain, sell, assign, transfer, and convey unto the party of the second part, and to its successors and assigns, all and singular its railroad, including its rights of way, road-bed and tracks, switches and side tracks, turntables, water-tanks, depot buildings, freight-houses, engines, tenders, cars, trucks, and all rolling stock of every kind, and all material of every description on hand for the purpose of operating, repairing, or running said railroad, all the lands donated by the State of Arkansas to the party of the first part by an act of the General Assembly — "An act to be entitled an act to donate certain lands to the

Washington and Hope Railway Company," approved March 5th, 1879, and more particularly described in a certain deed of conveyance executed by Thomas J. Churchill, governor of the State of Arkansas, on the 30th day of January, A. D. 1882, and which is duly recorded on pages 494 and 495, in vol. No. 13, of the Record of Deeds and Mortgages, in the office of the circuit clerk and *ex officio* recorder of Hempstead county; and also such lands as may hereafter be conveyed to the party of the first part by the governor of the State of Arkansas under said act of the General Assembly aforesaid, together with all other personal property and all real estate owned by the party of the first part and situated in Hempstead county, in the State Arkansas or elsewhere, and all the rights, privileges, and franchises conferred upon the party of the first part by the general statutes of this State for the incorporation of railroad companies, including the exclusive right to own, operate, and maintain a railroad between the towns of Washington and Hope, in Hempstead county aforesaid; to have and to hold the above-described property, franchises, lands, and appurtenance unto the said party of the second part, and its successors and assigns. And the party of the second part for and in consideration of the aforesaid conveyance hereby agrees that it will pay off and discharge all debts and liabilities of every kind due and owing or to become due by the party of the first part.

In testimony whereof the directors of the several corporations parties hereto have caused these presents to be signed in the
587 names thereof by their respective presidents and their several corporate seals to be affixed hereto this 18th day of September, A. D. 1882.

WASHINGTON & HOPE RAILWAY COMPANY,
[SEAL.] By W. H. CARRUTH, *President.*

Attest: R. B. WILLIAMS, *Secretary.*

ARKANSAS AND INDIAN TERRITORY RAILWAY COMPANY,
[SEAL.] By H. B. HOLMAN, *President.*

588 Memorandum of an agreement made and entered into this the 17th day of May, A. D. 1883, by and between the Arkansas and Indian Territory Railway Company, a corporation organized and existing by virtue of the laws of the State of Arkansas, party of the first part, and the Arkansas and Louisiana Railway Company, a corporation organized and existing by virtue of the laws of the State of Arkansas, party of the second part.

Whereas the party of the first part owns a charter and franchises for a line of railroad running from the town of Hope, in the county of Hempstead, in the State of Arkansas, in a northwesterly direction, through the town of Washington in said county and State, and through the counties of Howard and Sevier, in said State, to a

point on the line between the State of Arkansas and the Indian Territory at or near the town of Ultima Thule, Sevier county, Arkansas, about ten miles of which said line of railroad has been constructed and is now in operation, and the party of the second part has been organized and incorporated for the purpose of constructing a line of railroad from the said town of Hope aforesaid in a southeasterly direction, through the counties of Hempstead, Nevada, and Columbia, in said State, to the line between the State of Arkansas and the State of Louisiana, and the said railroads will form continuous and connecting railroads with each other;

Whereas the party of the first part is authorized by the laws of this State to sell and the party of the second part to purchase and operate the line of railroad owned by the party of the first part, and it is believed a sale will be beneficial to the stockholders of each incorporation and to the public: Now, therefore, this agreement witnesseth:

That the party of the first part, in consideration of the issue to it by the party of the second part of one hundred thousand dollars of its paid-up capital stock, the receipt whereof is hereby acknowledged, and of the agreement of the party of the second part hereinafter contained, has bargained, granted, and sold, and doth by these presents grant, bargain, sell, assign, transfer, and convey, unto the party of the second part, and to its successors and assigns, all and singular, its railroad, including its rights of way, road-bed, tracks, switches, and side tracks, turn-tables and water tanks, depot buildings, freight-houses, engines, tenders, cars, trucks, and all rolling stock of every kind and all material of every description on hand for the purpose of operating, repairing, or running said railroad, all the lands donated by the State of Arkansas to the Washington and Hope Railway Company by an act of the General Assembly entitled "An act to be entitled an act to donate certain lands to the Washington and Hope Railway Company," approved March 5th, 1879, and more particularly described in two certain deeds of con-
589 veyance executed by Thomas J. Churchill, governor of the State of Arkansas, one on the 20th day of September, 1881, and the other on the 30th day of January, 1882; the former of which has not been recorded, the latter is duly recorded on pages 495 and 496, in vol. No. 13 of the Record of Deeds and Mortgages, in the office of the circuit clerk and *ex officio* recorder of Hempstead county, and also such lands as may hereafter be conveyed to the said Washington and Hope Railway Company by the governor of the State of Arkansas, under said act of the General Assembly aforesaid, together with all other personal property and real estate owned by the party of the first part and situated in Hempstead county in the State of Arkansas, or in any other county in said State or elsewhere; and all the rights, privileges, and franchises conferred upon the party of the first part by the general statutes of this State for the incorporation of railway companies, or acquired by it by purchase, donation, or otherwise, including the exclusive right to construct, own, operate, and maintain a railroad between the town of Hope, in the county of Hempstead, in the State of Arkansas, and the point

hereinbefore mentioned between the line of this State and the Indian Territory.

To have and to hold all and singular the above-described railroad, railroad property, rights, privileges, franchises, lands and appurtenances, and all other property unto the said party of the second part and its successors and assigns forever.

Now, the party of the second part, for and in consideration of the aforesaid conveyance, hereby agrees that it will pay off and discharge all debts and liabilities of every kind due and owing or to become due by the party of the first part, whether the same have been contracted for the purchase of material or property of any kind, or in the construction of the road, road-bed, or buildings, or have been assumed by the said party of the first part, or upon any other account whatever.

Now, the said party of the second part, for and in consideration of the aforesaid conveyance, hereby further agrees that it will cause to be issued and delivered to the party of the first part one hundred thousand dollars of its paid-up capital stock.

In testimony whereof the directors of the several corporations parties hereto have caused these presents to be signed in the names thereof by their respective presidents and their several corporate seals to be affixed thereto, attested by the signatures of their respective secretaries, this the 17th day of May, A. D. 1883.

H. B. HOLMAN,
[SEAL.] *President Arka. & Ind. Ter. R'y Co.*

Attest: R. B. WILLIAMS,
Secretary Ark. & Ind. Ter. R'y Co.

W. H. CARRUTH,
[SEAL.] *President Ark. & La. R'y Co.*

Attest: R. B. WILLIAMS,
Secretary Ark. & La. R'y Co.

590 PAUL F. BEARDSLEY, Complainant,
v.
JOHN D. BEARDSLEY and THE ARKANSAS & LOUISIANA R'Y, Defendants.

Deposition of Paul F. Beardsley.

My name is Paul F. Beardsley. I am forty-three years of age. I am the complainant in this suit. I first came to this State
591 in September, 1881. I came at the request of John D. Beardsley, the defendant herein. He met me at the city of St. Louis, Mo., by appointment about the middle of that month. He had written me to telegraph him what day I would arrive there, and that he would meet me there. I did telegraph him from the town of Evanston, in the Territory of Wyoming. He procured passes for me from the city of St. Louis to the town of Hope, Ark., and return to St. Louis. He paid all my expenses from St. Louis to

Washington, Ark., and back to St. Louis. I demurred to his paying my expenses, but he insisted, saying that he had brought me down there to look over the property with the hope that I could make arrangements to buy his partner's half interest in it and become interested in it with him.

He expressed himself as having great faith in its success if we could work it out of debt and extend it. He said he felt quite sure his partner would sell his interest for $10,000 in ready money, and that he had repeatedly offered it to him on a credit for $12,000. I had suffered very severe losses in California from fires, depreciation of real estate, failures, and unfortunate mining speculations, amounting to more than $100,000, and I felt that his desire to have me associated with him in this railway enterprise was sincere, and that he was actuated by his brotherly affection for me—he being my elder brother and seven years my senior—and that it was his intention to assist me in some measure to retrieve some of my losses.

Acting on this belief, I went to the city of New York with the view of selling some mining properties which had been placed in my hands for sale upon a commission, the consummation of which sales would have enabled me to buy the interest of his partner in the railway. After spending about a month in the city of New York, during which time I was in constant correspondence with my brother about railway negotiations, &c., &c., and failing to accomplish the sales of the mining properties before spoken of, I returned to Washington under an understanding that I would work for the company for the sum of $75 per month until such time as we could make some satisfactory agreement about an interest in the railway, or, failing in that, until I could do better in some other business.

Immediately after my arrival in Washington, Ark., we discussed the purchase of the Alderman interest. He stated that Mr. Alderman was very anxious to dispose of his interest to him for the sum of $12,000 upon a very liberal credit, for the reason that his wife was not willing to come to Arkansas to live, nor was she willing to have him to come here to attend to the business without her; so, not being able to give it his personal attention, he was determined to dispose of it upon the best terms he could. Having no acquaintance with Alderman myself, I then urged my brother to write to him and purchase his one-half interest for the sum of $12,000 upon a credit for my account, with the understanding that he should apply all the profits of said interest to the payment of the $12,000 except what might be necessary for the actual living expenses of myself and family. To this he would not fully agree, but said that he was going home to spend Christmas
592 with his family in West Va., and that he would then purchase from Alderman his one-half interest upon the best terms he could make with him as to price and time, and that he would let me have two-thirds (⅔) of said interest upon the same terms and conditions which he should make with Alderman. This

arrangement I agreed to, and it was understood that it would be completed and go into effect on January 1st, 1882.

This agreement was made about Nov. 10th, 1881. Considering this to be a permanent arrangement, I wrote my wife, who with my three children was then residing in the city of Washington, D. C., to make her arrangements to come on to Washington, Ark., about Dec. 1st, and in response to my letter she and my children did come, arriving in Washington about Nov. 30th, 1881. A short time after my agreement with my brother about the purchase of Alderman's interest he received a letter from one J. W. Paramore, of St. Louis, Mo., saying that Mr. Alderman had written to him offering to sell him his one-half ($\frac{1}{2}$) interest in the Washington and Hope railway for the sum of $12,000, and asking him (J. D. Beardsley) of what said interest consisted and in what condition it then stood.

He consulted with me immediately upon the receipt of this letter, and we agreed that he should at once write to Alderman and accept his proposition to sell him (J. D. Beardsley) his one-half ($\frac{1}{2}$) interest in said railway for the sum of $12,000 upon a credit, and that I should have two-thirds ($\frac{2}{3}$) of said Alderman's interest, equal to one-third of the whole, for the sum of $8,000 upon the same terms as he should agree upon with Alderman. He immediately wrote to Alderman that he would accept his proposition to sell his interest for $12,000, and that he would go home about Christmas and agree with him about terms of payment, &c. By return of mail he received a reply from Alderman, saying that his letter had been received, and that he considered his interest in said railway sold to him for the sum of $12,000. This, as near as I can state, was about November 15th, 1881. We had talked this purchase over between ourselves previous to the receipt of Mr. Paramore's letter, and it was agreed that all the net profits of my one-third interest should be applied towards the payment of the $8,000, saving only what might be required for my necessary living expenses. I stated to him that I held a note against a party in California, which, with interest, amounted to over $1,200, and that this party owned property in Europe which was very valuable, and that he was then in Europe negotiating a sale of his property, and that I hoped upon his return to be able to collect the amount of said note, and if I did collect it I would pay it on account of said $8,000. I never stated to him at any time after coming to Arkansas that I owned a valuable gold mine, or that I had any other assets whatever that could be made available in paying any portion of the $8,000 other than the note above referred to. I believe that my brother at the time the Alderman purchase was made understood my financial condition as fully and as well as I did myself. I kept nothing secret from him, but, on the contrary, my large losses in California were the subject of frequent conversations between us.

After our agreement regarding the purchase was made, in
593 Nov., 1881, I went regularly upon the trains as conductor; also taking entire charge of the operating department of the road. Everything went on quietly and satisfactorily, and in my brother's absence, which was quite frequent, the entire business of

the road was under my control, and all the employees took their orders from me. About the 2nd or 3rd of January, 1882, my brother, without solicitation or request, handed me an envelope marked "Stock memorandum," and which contained the original stock memorandum, a true copy of which is set forth in the complaint in this cause, saying, "Here is a memorandum of our agreement, which you had better take and put away, for if anything should happen to me you would have nothing to show your interest in the road." Being quite busy at the time, I put the envelope in my pocket, and after going home that night examined it, finding that it corresponded with our agreement previously made, with the exception of a slight deficiency in the par value of the shares and an excess in the number of shares as expressed therein, but, believing this to be a clerical error and knowing we both understood the interest referred to as a full one-third ($\frac{1}{3}$), neither more nor less, I did not consider it necessary to call his attention to the error, but gave the memorandum to my wife for safe-keeping, and it has ever since been in my possession.

Previous to January of the present year this memorandum has never since been talked of or referred to between us, nor have I had any reason to feel or consider that he did not regard it as being in full force and effect, nor has he at any time since the delivery to me of the said memorandum, in January of 1882, and prior to the month of January, 1886, ever asked or demanded from me the payment of any money whatever on account of the payment of the $8,000 which he now claims to be due and wholly unpaid. Some time during the summer of 1882 or later my brother informed me that he had put me in the directory of the company. I did not request him to do so and was not present at the meeting of stockholders or directors when this was done and knew nothing about it until he told me. I was in daytime always engaged upon the road, and except in his absence took no part in the financial management of the company. When a directors' meeting was held he generally detailed to me what had been done, and in the same way when he returned from a trip to St. Louis or some other place where he had been on business for the company. He always talked over with me whatever he had accomplished by said trips. He told me he had withdrawn his name from the directory for the purpose of making a construction contract. He said he had made the contract in his own name for the reason that he could deal with outside parties more readily, and that he, being an alien, would have the right to carry any litigation that might arise into the Federal courts, which he considered a great advantage.

He never intimated to me nor did he consider that the construction contract would interfere with my rights or ownership in the road in any manner whatever. I was not present at the meeting of directors when the construction contract was entered into, to
594 the best of my knowledge and belief. So far as I can now remember I never attended but one meeting of directors, and my recollection of what occurred at that meeting is that it was held to authorize an issue of some bonds to the Iron Mountain Railway

Company as security or in payment of our indebtedness to them. I went with my brother to the secretary's office on one or two occasions after night to sign up some records or resolutions on the company's records, which he advised me was necessary to perfect the issue of these bonds to the Iron Mountain Company. Relying implicitly upon his judgment, good faith, and integrity, I acted under his instructions and complied with his requests in all these matters, never for a moment fearing that he would or could take advantage of any of my said acts. At the time of the organization of the Arkansas and Indian Territory railway and the Arkansas and Louisiana railway he told me that he had put me down as owning 200 shares of the capital stock of each of the said companies and himself as owning 400 shares in each of said companies. These and other circumstances of like nature served to lead me to believe that he was acting in good faith toward me at all times prior to January, 1886. The contract for the furnishing of rails, fastenings, rolling stock, and money made with the St. Louis, Iron Mountain and Southern Railway Company was made about the month of June, 1882, nearly one year before the construction contract marked Exhibit "H" to defendant's answer in this cause was made or thought about. On his return from St. Louis, after making said contract, J. D. Beardsley stated to me that he had told Captain Hayes that he had let me have an interest in the road. Some time in the summer of 1883 Captain Hayes telegraphed to J. D. Beardsley to meet him at Hope on a certain day. I went with J. D. Beardsley to Hope on the day named and we met Captain Hayes and party there. We had asked them to furnish us with another locomotive. Hayes took J. D. Beardsley to one side and said to him—so J. D. Beardsley afterwards told me—that they had helped us a good deal and wanted to help us all they could, but would like to feel that in helping us they would be helping themselves, and that they would like to have some of the stock of our company, and asked him, J. D. Beardsley, to come to St. Louis the next week and see him about it. I asked my brother how much stock they wanted, and he said one-half of all the stock. He also told me that Hayes had said to him that they could probably make one-half of the stock worth more to us than the whole would be if we kept it all ourselves. I said to him, J. D. Beardsley, that I thought that if we gave them half of the stock that they ought to assume or pay the $12,000 which was owing to Alderman, and he said he would talk to Hayes about it when he went to St. Louis. He went to St. Louis at the time agreed upon, and when he returned he told me that he had given Hayes one-half of the stock and assigned him also a one-half interest in the construction contract. I asked him what provision he had made for the $12,000 to be paid to Alderman, and he said that Hayes had questioned him as to what the $12,000 was for, and that on being told that it was for money put into the road by his former
595 partner he, Hayes, said, That is all right; let the company assume and pay that $12,000 just the same as any other debt.

At the time of my agreement with my brother, in November of 1881, the whole capital stock of the Washington and Hope Railway

Company consisted of one hundred thousand dollars, divided into four thousand shares of twenty-five dollars each. It was my understanding at that time that all of said stock was issued in the name of J. D. Beardsley, and that he held one-half of it in trust for his partner, Vinton Alderman, so that when the purchase of Alderman's interest was made no transfer of stock was made or necessary. At the time of my purchase of two-thirds of the Alderman interest, dating from January 1st, 1882, the road was completed the whole distance from Washington to Hope, with iron rails, and had one locomotive, one passenger car, and four freight cars running upon it. The road was what is known as a narrow-gauge road, and the rails were light rails, weighing from 22 lbs. to 25 lbs. per yard. No part of this iron or rolling stock or any other property of the said Washington and Hope Railway Company was claimed or spoken of as the private or individual property of J. D. Beardsley at the time of said sale to me, nor was any part of any of the said property reserved or exempted from the said sale, either verbally or in writing, nor did he claim that anything was due him from the road on account of same. These rails, rolling stock, land grants, and other personal property of the Washington and Hope railway are the same sold to the Arkansas and Indian Territory Railway Company and to the Arkansas and Louisiana Railway Company and referred to and forming a part of the consideration mentioned in the construction contract, dated May 22nd, 1883, marked Exhibit "H," to defendants' answer in this cause. I have read the deposition of one Edward Alexander, taken at Washington, Ark., June 22nd, 1886, and will say that I have no recollection of any such conversation as stated by him.

Whatever conversation was had, if any, referred only to the tie business then in settlement between us, and the subject of any interest in the road and its property was never at any time referred to between us nor discussed with him in any manner whatever.

I have also read the affidavit of one J. M. Simms, which is used by consent as his deposition, and will say that I have no recollection of any such conversation as stated by him. I never conversed with him in regard to my interest in the road nor stated to him that I had no interest in the road, or words to that effect, nor did I at that time or at any other time use or utter any words that could be construed in that way. After January 1st, 1882, I never considered that I was working for a salary. I drew from the agent or from Mr. Carruth from time to time such sums of money as were necessary to cover my living expenses and no more. I lived very economically, and my total expenses did not exceed an average of more than $100 per month, and some months of which I kept memoranda they did not exceed $75. No regular account was kept against myself or J. D. Beardsley from Jan. 1st, 1882, until Dec., 1883, a period of nearly two years, but we each drew just what was necessary
596 and no more. J. D. Beardsley never at any time during this period of two years in any manner referred to the question of salary, nor did he at any time by word or act intimate that he thought I was using more money than I ought or had a right to

use. During this period there were no other parties in interest in the road, but during the latter part of 1883 the stock interest was given to Captain Hayes, and it was then agreed that we must employ a book-keeper and keep a regular system of accounts. This we did about January or February of 1884 and the present set of books now kept by Mr. H. H. Wheeles were opened. All the other books and accounts kept by the agent of the company at the depot were burned in the depot in the month of October or November, 1883.

About December, 1883, J. D. Beardsley fixed for himself a salary of $200 per month and for me a salary of $100 per month. He did not consider me in the matter or ask me if that amount was satisfactory to me or not. He told me about that time that he had instructed Mr. Carruth to open accounts against each of us, and that when I wanted money to draw it from Mr. Carruth instead of from the agent. The first I knew about the amount of salary he had fixed for me was in January of 1884, and one day in the depot at Hope, he being on his way to St. Louis to complete some transaction with Captain Hayes, I remonstrated with him in regard to the amount allowed me. He replied that our general expenses (meaning salaries of general officers) were now larger in the aggregate than those of the Missouri Pacific and other large roads in proportion to the gross earnings of our road, and he did not want to increase the amount, as he wished to make a favorable showing in our monthly statements, which were forwarded regularly to Capt. Hayes for his inspection, and expressed it that the more favorable the showing we would make the more likely they would be to assist us with money to build the road south of Hope. About a year or more later than this, or some time in 1885, I again remonstrated about the amount of salary, but was again met with the same argument as before. I, however, did not urge the matter any further, from the fact that the amounts as fixed corresponded with our respective interests in the road, and I looked on it in the nature of a dividend on my interest, our original agreement being that we should both devote our time and energy to the advancement of the work of the company. We had an arrangement with the Little Rock Oil and Compress Company, commencing with the year or season of 1884, under which we received money from them for the purchase of cotton seed to be shipped to them in car-load lots. They fixed the price which we were to pay for seed from time to time, and upon receipt of the seed in Little Rock they gave us credit for the amount of seed received at an advance of about $1 per ton, which advance was intended to cover cost of weighing and loading the seed into the cars, and also any shrinkage that might occur in the weight. There resulted from this source for the season of 1884 and 1885 a profit to the company of something over $500. This profit was divided between us in proportion to our respective interests in the road, viz., to J. D. Beardsley two-thirds and to myself
597 one-third. The vouchers for the amounts which were passed to each of our accounts are more particularly referred to and set forth in the deposition of W. H. Carruth. The same arrange-

ment existed with the oil and compress company for the season of 1885 and 1886 just passed, and the books of the company show a profit on the seed transactions for this season of about $915, which amount has been appropriated by J. D. Beardsley to his own private use and benefit since the commencement of this action; and the books further show the payment of the said $915 to J. D. Beardsley by W. H. Carruth, treasurer, during the months of April and May last passed. There was also a contract made by J. D. Beardsley with the Pan Electric Telephone Company, under the provisions of which the Pan Electric Telephone Company were to furnish telephones at a stated price each, to be used on the line of the Arkansas and Louisiana railway and in territory tributary to it in the States of Arkansas and Louisiana. At least four of said instruments have been purchased from said telephone company, and about twenty-seven miles of telephone line has been constructed, all of which have been paid for out of the funds of the said railway company, as shown by its books. The said telephone line is constructed upon the telegraph poles of the Arkansas and Louisiana Railway Company, and was put up by the regular employees of the said company. The greater portion of said construction was superintended and directed by me.

An agreement was entered into between J. D. Beardsley, acting on behalf of the Arkansas and Louisiana Railway Company, and certain citizens of the town of Nashville, in Howard county, Arkansas, under the provisions of which certain lands, to wit, about 320 acres, more or less, were donated to said railway company for the purpose of securing the extension of the said railway company to the town of Nashville and the establishing of a depot upon said land. This agreement was made about the summer of 1883, but the deed to said lands were not made until 1884 or 1885, and were then made in the name of J. D. Beardsley.

There has also been built upon a portion of the said land in the town of Nashville, Arkansas, a large and commodious hotel building, costing over $5,000, and furniture has been purchased of the value of ——, all of which have been paid for out of the funds of the said Arkansas and Louisiana Railway Company. There are also other lands which have been purchased by J. D. Beardsley from the St. Louis, Iron Mountain and Southern Railway Company and from other persons, all of which have been paid for out of the funds of the Arkansas and Louisiana Railroad Company, but are now standing in the name of J. D. Beardsley, to wit, lot 8, block 13, and lots 5, 6, 8, 9, and 10, in block 20, all in the town of Hope, in Hempstead county, and all of blocks 83, 104, 131, 138, and 146, in the town of Washington, in Hempstead county; also the W. ¼ of S. E. S. W. and E. S. W. S. W. of section 30, township 10 south, range 25 west; also the S. W. N. W., the N. E. S. W., and the S. E. S. E. of section 31, township 10 south, range 25 west; also the S. W. N. E.
598 and the N. W. N. E. and N. ½ S. W. of section 2, township 12 south, range 25 west; also the S. E. of S. W., section 30, township 9 south, range 26 west; also the N E. S. W., the S. W. S. W., the E. N. W. S. W., of section 30, township 9 south, range 26 west; also the S. W. of N. W. of section 4, township 10 south, range 26

west, and part of S. W. S. E. of section 32, township 9 south, range 26 west. All these lands and, in fact, all lands now standing in the name of J. D. Beardsley in the counties of Hempstead and Howard, excepting only the lots upon which his residence has been erected, in the town of Washington, are the property of and have been paid for out of the funds or earnings of the Arkansas and Louisiana Railway Company.

There has been realized in all from the sale of the old material of the Washington and Hope Railway Company the sum of about $14,000, all of which when received was used in the construction of the Arkansas and Louisiana railway; but about the sum of $5,100 was wrongfully charged to the construction account of said Arkansas and Louisiana railway and credited to the personal account of J. D. Beardsley, as appears by the books of said Arkansas and Louisiana Railway Company.

There is also a credit to J. D. Beardsley on the books of the said railway company of $433 which purports to be the proceeds of a check received from the Baltimore and Ohio Railroad Company for the personal account of J. D. Beardsley. The said check was received at Hope through the Southern Express Company, and was payable to the order of J. D. Beardsley. It was for a claim against the Baltimore and Ohio R. R. Company which was collected by a claim agent in Indianapolis. This check was received about February 6th, 1882, and there was a C. O. D. charge of $125.00 paid to the Southern Express Company on the receipt of said check. This check was never, so far as I can learn from a careful examination of all the books of the company, received and used by the Washington and Hope Railway Company or any of its successors, but was taken East by J. D. Beardsley and collected and used for his own personal account and benefit. The books do not show any charge to J. D. Beardsley's personal account of the $125 paid for the agent's commission for the collection of the said check. I think the proceeds of this check were used by J. D. Beardsley in moving his family from West Va. to Arkansas. He remarked to me afterward that he did not see how he could have moved his family if he had not received this money from the Baltimore and Ohio R. R. Company. I never saw any balance-sheet of the books of the Arkansas and Louisiana Railway Company at any time or any other statement made from said books, except the weekly or monthly statements of earnings. I don't think I ever looked into the said books more than two or three times before January 1st, 1886.

If there was ever a balance-sheet made of said books I never knew it or saw it, so far as I now remember. There was due to the Washington and Hope Railway Company from citizens of Washington and Hempstead county at the time I purchased my one-third interest, on Jan. 1st, 1882, on account of bonus notes, about
599 $6,000. Most of these notes have since been paid and the proceeds have been applied to the payment of the debts of the Washington and Hope Railway Company or used in the construction of its successor, the Arkansas and Louisiana railway.

During the season of 1883 and 1884 the cotton-seed business was

handled by a man named Davis for the Little Rock Oil and Seed Company. His transactions were not satisfactory to the oil company, and J. D. Beardsley told me that Major Haynes, manager for the oil company, had asked him to let our agents at each depot receive and pay out the money for all seed purchased on the line of our road and to attend to the weighing *to* the same. He said that, as Davis had made his arrangements for that season, he did not think it would be fair to Davis to take the matter out of his hands then, but that he had agreed with Major Haynes that we would handle all the seed purchased on our road after that season.

The records of the net and gross earnings of the road previous to November of 1883 were burned in the depot at Washington about that time, but the following statements of gross and net earnings for the years 1882 and 1883 are obtained from Poor's Manual of the Railroads of the United States, and are presumed to be correct; said statements were furnished to Poor's Manual for publication by J. D. Beardsley previous to the burning of the depot, in November, 1883:

Earnings — yr. end. Dec., 1882.—Gross		12,315 92
	Exp	6,250 00
	Net	$6,065 92
Earnings for yr. end. Dec., 1883.—Gross		$20,000
	Expense	12,000
	Net	$8,000
Earnings for year end. Dec., 1884.—Gross		$38,402 40
	Exp	13,578 56
	Net	$24,823 88
Earnings for year end. Dec., 1885.—Gross		53,573 44
	Expenses	19,143 56
	Net	$34,429 85

During the period from January 1st, 1882, until about Jan. 1st, 1885, I worked on the road in various capacities. I was recognized as assistant superintendent of the road, and no employee ever to my knowledge refused to obey my orders as such. During the spring of 1882 about three miles of the narrow-gauge road-bed was washed away, which stopped the running of trains for a period of about one month. I assisted to rebuild and relay the track on this three miles of road, and helped to rebuild all of the bridges upon it. Nearly all that summer I supplied the place of engineer on the narrow-gauge engine, taking on a new fireman and keeping him with me until he was able to run the engine

In the fall of 1882 I took charge of the broad-gauge engine which was then being used on construction, again taking on another fireman and learning him to run the engine. When not upon the engine I was continually upon the road, either as conductor or upon the construction work. I superintended the laying of nearly all the broad-gauge track between Hope and Washington, and much of that between Washington and Nashville. On several occasions I have been out upon the road from twelve o'clock noon until after daylight the next morning, working incessantly without food all that time. On two of these occasions I suffered intensely from the bitterness and inclemency of the weather. On many other occasions I have worked nights and long hours. I never asked or received any compensation for any night work or overtime. The reason that I did not demand pay for night work or extra time was because I considered that I was working and improving my own property, and had I owned it entirely by myself I could not have worked harder or taken a greater interest in it.

All the regular employees of the company demanded and received extra pay for night work or for extra time over ten hours per day.

I never worked as hard in my life as I have worked on this road during the time from 1882 to 1885. After January of 1885 the work was not so laborious or incessant, the road then having been completed to Nashville, Ark., its present terminus. There was received from the sale of narrow-gauge iron taken out of the track of the Washington and Hope Railway Company as follows, viz:

7⅜ miles, 22-lb. iron, at $35.00 per ton of 2,120 lbs.....	$9,429 00
7 " fish-plates & bolts, 3,080 joints, at 25 cts.....	770 00
25,000 lbs. spikes, at 2 cts.....	500 00
Amount taken to J. D. B.'s acc't for 2⅜ miles track.....	4,732 50
Total from sale of N. G. track.....	15,431 50
Amount collected from bonus notes unpaid Jan. 1, 1882, about.....	5,000
Amount of cash sale of land grant which was paid to D. E. Garrison & Co. on account of steel rails for A. & L. Co.....	7,000
There were other land sales made from time to time, amounting to over.....	1,000
Total.....	28,531 50

The above figures do not purport to be exact, but they will not vary materially from a correct statement of the sales as made. The first sales of 22-lb. iron made to the Lampases Street railway were made by me, J. D. Beardsley at the time being absent either in New York or St. Louis. As tending to show the nature of the business relations existing between J. D. Beardsley and myself previous to January 1st, 1882, I herewith attach the original or part of a letter dated October 8th, 1881, and received by me while in the city of New York, which said letter was signed

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by John D. Beardsley, the defendant herein, and the part hereto attached is in his proper handwriting.

The said part I found among some old papers after the institution of this suit, just in the condition it is now. I have made diligent search for the portion of said letter which is missing, but have failed to find it. I do not know how it came to be torn or cut or what became of the missing part, but I suppose that my children, who were in the habit of cutting up papers into paper dolls, and so forth, found about the house, cut the said letter. Recollection about the contents of the missing part of said letter is not very distinct, but it is that there was nothing in said part inconsistent with the part hereto attached, marked Exhibit "B," and made a part hereof.

And I also attach hereto as Exhibit "C," and make it a part of my deposition, a letter received from J. D. Beardsley by me, dated at Washington, Ark., Oct. 24, 1881, which is in his handwriting, with his proper signature thereto subscribed, which letter was addressed to me at the city of New York.

I also hereto attach and make it a part of my deposition—that is, the parts of said letter which refer to the subject-matter of the litigation in this suit—a letter written by J. D. Beardsley to me, dated at Washington, Ark., February 7th, 1886, which is in the handwriting of John D. Beardsley, with his signature thereto subscribed, and marked Exhibit "D."

PAUL F. BEARDSLEY.

602 PAUL F. BEARDSLEY, Plaintiff,
vs.
J. D. BEARDSLEY *et als.*, Defendants.

Deposition of J. D. Beardsley, Defendant in the Case.

Question. What is your name, residence, age, and occupation?

Ans. My name is J. D. Beardsley; I have resided in Wash-
603 ington, Ark., for the last seven years; I am 49 years of age; I am operating the Arkansas and La. railway.

Qu. Did you build the Washington and Hope railroad; and, if so, how came you to do so?

Ans. I did; I built it under a contract with the Washington and Hope Railway Company, which was made in September, 1879.

Qu. When did you begin work on this road and at what time was it completed?

Ans. I began it in September, 1879. It was opened for traffic about September, 1880, and was accepted as completed under our contract by the Washington and Hope Railway Company of the date of January, 1881.

Qu. Was Mr. Paul F. Beardsley with you or with the railroad company during the construction of the road?

Ans. He was not with me or with the R'y Co. The Co. then had no employees. He was in California at that time.

Qu. At what time and under what circumstances did he first enter the employment of the road?

Ans. He came to the road as an employee. He had gone east from California in the fall of 1881; probably in September. In October, 1881, he wrote me from New York asking if I could give him employment on the road. At that time the earnings of the road were very small and I was obliged to use the closest economy to meet current expenses; the business was very light and we did not need him. I felt, therefore, that we could not afford to employ him and wrote him to that effect. He replied at once, saying that he was entirely out of available means and had his family on his hands, and urged me to employ him at seventy-five dollars per month to enable him to support his family. Upon that I wrote him to come, and he came at once and went to work on the road about the 4th or 5th of November, 1881, I think.

Qu. Was the road then completed and in operation?

Ans. Yes; it had been in operation for more than a year. It had been accepted as completed under the contract from January 1st, 1881, which was over ten months before Mr. Paul Beardsley came.

Qu. What had the road cost up to the time Mr. Paul Beardsley first came?

Ans. From the beginning up to that time it had cost over fifty thousand dollars.

Qu. What was the indebtedness of the road when Mr. Paul Beardsley first came?

Ans. About seventeen or eighteen thousand dollars.

Qu. What was the stock of the road?

Ans. The stock was one hundred thousand dollars, nominal or face value.

Qu. By whom was this stock held?

Ans. Ninety-nine thousand eight hundred dollars was in my name, having been received by me for the construction of the road under the contract; the balance was owned by several citizens of Washington, Ark.

604 Qu. Did you own all the stock that stood in your name at that time?

Ans. No; one-half of it belonged to a Mr. Alderman, subject to a settlement of accounts between us as to the amount each had contributed to construction.

Qu. How did Mr. Alderman come to own this stock?

Ans. After I had made the contract with the Washington and Hope R'y Co. and begun the work I made an arrangement with Mr. Alderman by which he went into the enterprise with me. It was agreed between us that each should contribute until the road was completed, and that the stock received for building should be equally divided between us. It was also agreed that when the road was completed Mr. Alderman and I should have a settlement, and he who had contributed the least should pay to the other sufficient to equalize the outlays.

Qu. How came Mr. Alderman's stock to be in your name?

Ans. Mr. Alderman was not known to the R'y Co. in the transaction. They therefore delivered the stock to me.

Qu. Was there a written contract between you and Mr. Alderman?

Ans. No; the understanding was verbal.

Qu. Was not that rather an unbusinesslike way to undertake so large and complicated a matter, on a verbal understanding?

Ans. Probably it was; but Mr. Alderman and myself had transacted business with each other for a term covering several years. Some of the transactions before had been quite large and complicated. We never had a written agreement between us. We never had any trouble, and feared none.

Qu. Was your arrangement with Mr. Alderman carried out? If not, why?

Ans. Not as originally contemplated. Mr. Alderman went into the enterprise with the intention of moving to Arkansas to reside and taking part in operating the road. Before the road was completed he abandoned this plan. He then became desirous of selling his investment. He began to urge me to purchase his stock as early as January, 1881, and probably earlier.

Qu. Did you deliver Mr. Alderman his portion of the stock? If not, why?

Ans. I did not. I would have delivered it if he had called for it, but he never did.

Qu. Did you have any settlement with Mr. Alderman?

Ans. Not on the basis originally proposed. I afterward bought his investment for twelve thousand dollars. It was understood that this purchase settled the whole matter.

Qu. Who contributed the larger amount to the construction of the road, you or Mr. Alderman?

Ans. As I remember, there was not much difference in the money contributed by each; but, in addition to the money I contributed, I put in a lot of material, consisting of iron rails, spikes, fastenings, a locomotive, and cars, which material was worth at the time probably over ten thousand dollars.

605 Qu. Do I understand that if you had settled with Mr. Alderman instead of buying him out he would have owed you about one-half the value of the material you furnished?

Ans. Yes; I think, including the material, he would have owed me as much, perhaps, as five or six thousand dollars.

Qu. Then, in buying Mr. Alderman's stock at twelve thousand dollars, did you consider that you were getting it below its value sufficiently to cover the amount he would otherwise have had to pay you on account of the material?

Ans. Yes; I think so.

Qu. Will you state exactly what the material was; when, where, and how you got it?

Ans. As I remember, the material consisted of something over one hundred and twelve tons of twenty-five-pound iron rail, six tons of railroad spikes, one narrow-gauge locomotive, two second-class narrow-gauge passenger coaches, two flat cars, and the irons of a turntable. The weight here given is in tons of two thousand pounds. I was in Memphis, Tenn., in the month of July, 1879, and while

there I bought this material from the county court of Shelby county, then in session in Memphis. The purchase was made either on the 7th or 8th of July. I am able to fix the date by being there — 4th and leaving there the day before the stampede from the yellow fever, which was, I think, the 10th of that month.

Qu. You bought this material, then, before you contracted to build the road between Washington and Hope?

Ans. Yes.

Qu. Did you pay for this material with your own money or with money that belonged to you jointly—that is to you and Mr. Alderman?

Ans. Mr. Alderman and I never had any money jointly. I had my own money to pay for it. In the construction of the road I handled all the money used. I went back and forth between Washington, Ark., and Cairo, West Va., where my residence was. I used to bring money with me to Washington. Mr. Alderman collected a good deal of money for me in one way or another, as much as nine or ten thousand dollars. A portion of this was sent to me by him in checks and drafts and used in construction. Mr. Alderman also sent money of his own in the same way.

Qu. When you decided to buy Mr. Alderman's stock how long were you negotiating with him for it?

Ans. I did not negotiate with him at all. He had offered me the stock. He had frequently urged me to buy it through the year 1881, but I did not consider it at all previous to the day I made the purchase.

Qu. Why?

Ans. Because the earnings of the road were very small, and its ability to sustain itself was not clear. I had put most of what I had into it, and I did not want to get in any deeper until I saw a better prospect. Mr. Alderman had offered me his investment for twelve thousand dollars, which was very low, as I thought, but I did not want it.

606 Q. Why, then, did you buy it?

Ans. I got a letter from Col. Paramore, then president of the Texas and St. Louis railway, saying that Mr. Alderman had offered to sell him his interest, and he asked me for information. In view of the fact that the Texas and St. Louis was being built to parallel the Iron Mountain R'y, I thought if this sale was made we would incur the hostility of the Iron Mountain and be ruined. To prevent this I wrote to Mr. Alderman on the same day I received Col. Paramore's letter that I would take his stock at twelve thousand dollars if he would give time to pay for it. Within a week I received a letter from him saying he considered it sold to me.

Qu. What was the date of your purchase of Mr. Alderman's stock?

Ans. I think it was on Nov. 10th, 1881.

Qu. How long was that after Mr. Paul Beardsley came to the road?

Ans. I think it was about four or five days. I do not think it was longer than that.

Qu. Mr. Paul Beardsley says in his complaint that after he came to Washington you and he consulted together about buying Mr. Alderman's stock, and that having ascertained that Mr. Alderman would sell it on credit it was decided between you that you should buy it and let him have two-thirds of it. Is that correct?

Ans. That is a mistake. I never contemplated buying it until I got Col. Paramore's letter. On reading that I decided instantly that it was necessary to buy it if I could to protect my investment in the road. I received Col. Paramore's letter in the mail that came in then at noon. I at once wrote Mr. Alderman that I would take his stock at twelve thousand dollars if he would give me time to pay for it. This letter went out on the mail which left the same day at 2 o'clock p. m. Previous to writing this letter I had had no correspondence with Mr. Alderman for some weeks. I doubt if there had been any correspondence about the purchase. What had passed was, I think, verbal. When we met Mr. Alderman lived at Belpre, Ohio, but had lumber mills in West Va., where he spent most of his time. It was always a week before I could get an answer to a letter from him, but it took oftener ten or twelve days. As Mr. Paul Beardsley had only been there at most five or six days, there was not time for any correspondence, and he is evidently mistaken. When I wrote the letter I did not know whether Mr. Alderman would grant a credit or not.

Qu. Did you consult Mr. Paul Beardsley in reference to making this purchase after getting Col. Paramore's letter and before you wrote to Mr. Alderman?

Ans. I did not. I told him afterwards, but I do not think I told him until after I received Mr. Alderman's reply.

Qu. Did you afterward sell Mr. Paul Beardsley some stock; and, if so, how much?

Ans. I did sell him some stock, or, as I understood the transaction at the time, I agreed to sell him $33,250 face value of the
607 stock of the Washington and Hope Railway Company, which I was not to deliver until paid for. The price to be paid was $8,000.

Qu. When was this sale?

Ans. On December 31st, 1881.

Qu. Was that after you had purchased from Mr. Alderman?

Ans. Yes; that was about six weeks or more after I had bought from Mr. Alderman.

Qu. Did you have the stock on hand at the time you made this sale to Mr. Paul Beardsley?

Ans. I did.

Qu. Why did you not deliver it to him then?

Ans. Because he did not have the money to pay for it.

Qu. What were the circumstances of the sale and the terms?

Ans. Mr. Paul Beardsley had been importuning me to sell him some of the stock from a time beginning soon after his arrival. He said he had no money, but represented that he had left a valuable mine and machinery in California which he was negotiating to sell and which would realize a good deal of money. He proposed

to pay from this source for any stock I would let him have. I finally agreed to sell him thirty-three thousand two hundred and fifty ($33,250) face value of the stock for eight thousand dollars ($8,000). This was substantially at the same rate I had paid Mr. Alderman. I explained then, and he understood, that in parting with the stock at this price the material I had bought in Tennessee was my property—that is, the road was to pay me for it. The understanding was that the stock was not to be delivered until it should be paid for. It was also agreed that the $8,000 should bear interest from the date of my purchase from Mr. Alderman.

Qu. Was there any connection between this sale and your purchase from Mr. Alderman?

Ans. No; there was not.

Qu. Then why was the interest to run from the time of your purchase from Mr. Alderman?

Ans. Because I sold him the stock at almost exactly the same price that I was to pay per share to Mr. Alderman for what I got from him. If I had not made the interest run from that date I would have been agreeing to sell stock for less than I had bought some for.

Qu. When did you expect to deliver him the stock?

Ans. I expected to deliver it whenever he should pay for it.

Qu. How long did you expect the transaction to stand open?

Ans. From what he told me about the probability of selling the mine, I did not expect it to stand open long.

Qu. When did you give him the memorandum of the transaction which he exhibits?

Ans. I gave it to him the next day after I had agreed to sell him the stock. It was January the 1st, 1882.

Qu. Why did you give him this memorandum? Did he ask you for it?

Ans. I gave him the memorandum because in thinking of the matter that night it occurred to me that there might come up
608 some questions afterwards about the time from which the interest was to run or the exact amount of stock I had agreed to let him have for the money. The memorandum was made by me without any request from him. He did not ask for any writing.

Qu. What did you intend to show by the memorandum?

Ans. The principal idea was to fix the date of the interest and the amount of stock, but I intended it to show that I had agreed to sell him $33,250 face value of the stock, to be delivered only when he should pay for it.

Qu. Mr. Paul Beardsley says in his complaint that this memorandum does not correctly describe the transaction. He says that the sale was for one-third of all the stock, and that the sale was for thirteen hundred and thirty-three and one-third shares, amounting to thirty-three thousand three hundred and thirty-three and one-third dollars, and that upon the receipt of this memorandum he went heartily and earnestly to work, &c., &c. What do you say to that?

Ans. If this memorandum is of such a character as to pass the

title to the stock before payment by him and delivery to him I say also that it does not correctly describe the transaction. I also agree with him that it does not correctly describe the transaction in the number of shares set out. The shares were twenty-five dollars each, and it is therefore apparent that the memorandum cannot be correct as to the number. I do not, however, agree with him as to the amount or the number of shares. It would have been impossible to have made a delivery of such fractional stock as he asserts was sold, as the shares of twenty-five dollars cannot be divided in that way. Besides this I had only $99,800 of the stock, and $33,333 33 would be more than one-third of this. As the memorandum was made by me expressly to fix the amount and time, I am able to say positively that the amount there set forth is the amount I agreed to let him have—that is, $33,250 of the face value. His declaration that after the receipt of this memorandum he went to work earnestly does him injustice, I think. He had then been in the employment of the road for some time. I did not observe that there was any difference in the quality of his work before and after my agreement to sell him. In reference to the amount of stock he claims I sold and the amount that was put in the memorandum, the absence of the fractions in the memorandum would at once have been noticed when he read it. When I gave it to him he read it over and put it in his pocket.

Qu. How much stock did you have at the time you agreed to sell Mr. Paul Beardsley?

Ans. I had ninety-nine thousand eight hundred dollars, face value.

Qu. Who, then, held the rest of the stock?

Ans. I think all the rest was held by Hon. J. K. Jones, W. H. Carruth, A. B. Williams, W. P. Hart, R. B. Williams, J. D. Conway, Thos. H. Sims, and Henry B. Holman.

Qu. Were these parties "*bona fide*" owners of the stock they held?

609 Ans. I should say they were. I think every dollar of stock they had cost them from twenty to fifty times its face in cash

Qu. Did they get their stock from you?

Ans. No; they subscribed for their stock in the original company and paid for it. I got my stock from them.

Qu. What finally became of the Washington & Hope railway stock?

Ans. On September 18th, 1882, the Washington and Hope railway was sold to the Arkansas and Indian Territory R'y Company, and that company agreed to give the holders of the Washington & Hope stock, and they agreed to accept for their stock an equal amount of the stock of the Ark. & Ind. Ter. R'y Co. On the 17th of June, 1883, the Arkansas and Indian Territory railway was sold to the Arkansas and Louisiana Railway Company, and that company agreed to give the holders of the Ark. & Ind. Ter. stock, and they agreed to accept for their stock a like amount of the stock of the Arkansas and Louisiana Company. By these two transfers the stock of the Washington and Hope Railway Company was replaced

by a like amount of the stock of the Arkansas and Louisiana Railway Company.

Qu. Was Mr. Paul Beardsley aware of these transfers?

Ans. He was. He subscribed for stock in the Arkansas and Indian Territory railway at its organization and was elected a provisional director in that company. As such director he was a party to the purchase of the Washington and Hope railway and aware of the terms of that purchase. At the organization of the Arkansas and Louisiana Co. he subscribed for stock in that company and was elected a provisional director in that company. In the sale of the Arkansas and Indian Territory railway to the Arkansas and Louisiana Railway Company he was therefore a party to this transaction on both sides, being at the same time a director in both companies.

Qu. In these transfers did he claim any interest or was he recognized as a party in interest? I mean as to the Washington and Hope stock.

Ans. I did not understand that he made any such claim. After the sale of the Washington and Hope railway had been consummated all the stockholders of that company signed satisfaction for their stock on the records of the Arkansas and Indian Territory Railway Company. Mr. Paul Beardsley was not a stockholder in the W. & H. Railway Company, and did not then claim to be. He did not sign satisfaction nor was he asked to do so. When the sale of the Arkansas and Indian Territory railway to the Arkansas and Louisiana Railway Company was made the stockholders of the former company were required to sign satisfaction on the records of the latter company. Every one of these were "*bona fide*" stockholders except Mr. Paul Beardsley, holding their stock in place of their stock in the W. & H. Railway Company. As Mr. Paul Beardsley had subscribed for stock in the Ark. & Ind. Ter. Company, though he had not paid anything on his subscription, it was considered that he should sign satisfaction in that case, and he did so.

610 Qu. Up to the time of the sale of the Washington & Hope railway and the transfer of that stock, had Mr. Paul Beardsley paid you the eight thousand dollars or any part of it on account of the purchase?

Ans. He had not paid a cent up to that time, nor has he at any time ever paid or offered to pay me a cent on account of it.

Qu. What reason has he given for not paying you?

Ans. He has never given any reason. From the 1st day of January, 1882, when I gave him the memorandum he exhibits, he never spoke to me again about the transaction until some time in February, 1886, when I first spoke to him about it.

Qu. Do you mean to say that from the time you gave him this memorandum, on January 1st, 1882, the transaction was not again mentioned or referred to between you for more than four years?

Ans. Yes; that is what I say.

Qu. Was there during that time any understanding between you that he had an interest in the property?

Ans. Never at any time.

Qu. Was there at any time during those four years any conversation between you in regard to his having an interest in the road?

Ans. Never at any time.

Qu. Did he sell his mine?

Ans. I do not know. I do not remember to have heard any mention of the mine after January 1st, 1882.

Qu. Yet during these four years or more you were constantly with him, seeing and conversing with him almost daily and hourly?

Ans. Yes; I was with him a great deal. During part of the time I boarded at his house. He was acting assistant superintendent of the road and that relation threw us together a great deal.

Qu. Were your relations to each other friendly—confidential?

Ans. I think they were more—they were brotherly. I do not remember that we ever had an unpleasant word. I had nothing kept from his knowledge in connection with the road or its management.

Qu. Did you not think it strange that in all these four years and more he never offered to pay you anything on account of the purchase nor even mentioned it to you?

Ans. No; with the understanding I had of the transaction, I did not think it very strange.

Qu. Will you explain that?

Ans. I regarded the transaction as a conditional sale of so much stock to be delivered and the title to pass only when paid for. As he had given me no contract, I did not consider that I could compel him to take the stock and pay for it, even if he had the money. I did not even have a copy of the memorandum which he held. The earnings of the Washington and Hope railway were so small and the outlook so unfavorable afterwards that if he had got the money he expected he probably would not have been willing to have paid for the stock and taken it. As I heard no more about the mine, I concluded that it was probably worthless and could not be
611 sold. When he did not again refer to the matter for some months I thought the sale was off.

Qu. You said the matter was not again referred to between you until you spoke to him about it. Where and when was that, and what did you say to him?

Ans. It was at Nashville, Ark. It was in February, 1886, after he had asserted this claim. I told him at that time that he could have the stock even now, if he would pay for it.

Qu. What stock did you mean?

Ans. I meant the $33,250 face value of stock that I had agreed to sell him in 1881.

Qu. What reply did he make to you?

Ans. He said he did not owe me a cent for the stock, or that he would not have to pay me a cent for it, or words to that effect.

Qu. What did he mean by that?

Ans. I did not understand what he meant.

Qu. Have you ever been paid for it or anything on account of it?

Ans. Not a cent that I know of.

Qu. Did you say that you received an amount of the stock of the

Arkansas and Louisiana Railway Company equal to and in exchange for your Washington and Hope stock?

Ans. Yes.

Qu. Then you now hold in place of the W. & H. stock $99,800 face value of the stock of the Arkansas and Louisiana Railway Company?

Ans. No; I do not hold quite so much. When the stock was issued to me, knowing that each of the old directors had his stock at a price ranging from twenty to fifty times its face value, I allotted to each enough to give him one thousand dollars face value. This left me $92,000. Out of that I had some put in the name of Mr. Paul Beardsley to qualify him to act as a director.

Qu. Was not Mr. Paul Beardsley already a director of the Arkansas and Louisiana railway; and, if so, why was it necessary to issue stock in his name?

Ans. He had subscribed for stock in the Arkansas and Louisiana Railway Company at is organization. On this subscription he had been elected a provisional director, but no certificates were ever issued on this subscription, and all of the original subscriptions were abandoned, and he therefore had no stock of his own.

Qu. What was the necessity of making him a director?

Ans. There was no necessity at all. There were eight directors without him. It was done to please him and to give him standing.

Qu. Will you state as fully as you can what was the condition of the Washington and Hope railway, both physically and financially, when it was sold to the Arkansas and Indian Territory Railway Company?

Ans. It was not good in either respect. During the time I had been operating the road—that is, between two and three years—its gross earnings had not exceeded about twelve thousand dollars per year.

612 We started with a new road and an indebtedness of about eighteen thousand dollars, of which over sixteen thousand dollars was for iron rails, for which I had given my individual notes, which were secured by a mortgage on the road. The locomotive put on the road was a good one and had been put in first-rate order in the shops of the Memphis and Little Rock railway. After operating the road for two years with the utmost economy this was its condition: Its indebtedness was considerably greater than at the start. There had been an apparent reduction of the mortgage debt of about two thousand dollars, but this had not been paid from the earnings of the road, but from the proceeds of notes of the citizens of Washington paid me under my original contract for building the road and which belonged to me personally. Even excluding this, however, the debts were larger than at the start. The iron rails had begun to show wear and a good many of them were no longer fit for use and needed to be replaced. The life of the ties was at least half gone. The locomotive was so run down in condition that it was hard work to keep it going, and it sometimes took the whole day to make the round trip to Hope, a distance of ten miles. The track was in such bad condition that the cars were constantly getting off. There was no money on

hand for repairs of any kind. The directors had fixed my salary at two thousand dollars per year. More than half of my salary for the whole time was due and unpaid, and is still so. The Iron Mountain Railway Company delivered us freight with their charges, which we collected for them. We settled with the Iron Mountain R'y about the last of each month for the freights collected the previous month. We should therefore have had on hand their collections for two months to pay for one. Yet, so short were we of funds that we were almost always obliged to borrow from Mr. Carruth, our treasurer, to make up the amount we owed for freights collected. The mortgage notes were overdve and the mortgagees could have foreclosed at their pleasure and sold the property. There was, as I remember, about two hundred dollars in the treasury at the time the road was sold, and we owed the Iron Mountain Company from $1,500 to 2,500 for freight collected for them.

Qu. I understand you to say that you did not draw one-half your salary from the Washington and Hope Railway Company during these two years, and that the balance is still owing you. Did Mr. Paul Beardsley draw the whole of his salary during these two years?

Ans. Your understanding is correct. Mr. Paul Beardsley drew his salary during that time and overdrew it considerably, perhaps as much as $400.

Qu. Did he ever make the overdraft good?

Ans. No, he never did.

Qu. Did the road receive any assistance from outside sources during this time?

Ans. Not to any considerable extent. I received some money from sales of personal property and from debts due me in West Va. which I put in. From this source the road got perhaps between one and two thousand dollars. I had a lot of personal obli-
613 gations of citizens of Washington, amounting to about eight thousand dollars. I collected a considerable portion of this amount and devoted it to the obligations of the road.

Qu. Do you mean that you put in these sums after the road was finished and accepted by the company?

Ans. Yes; that is what I mean.

Qu. Did Mr. Paul Beardsley ever put any money in, in the same way?

Ans. No; not within my knowledge. So far as I know, Mr. Paul Beardsley, has never put a cent into the road in this way or in any other way.

Qu. If the Washington and Hope railway had not been transferred to the Arkansas and Indian Territory railway could it have sustained itself?

Ans. Without outside assistance the road could not have sustained itself. I am satisfied that reaching from Hope to Washington only it would never have been self-sustaining. As it then stood it was insolvent and existed only by the forbearance of its creditors.

Qu. Well, what was the result, and how was it brought about?

Ans. I was constantly trying to get money to build more road.

I believe as the case stood it was only a question of time when I should lose what I had invested. I was also held personally to Mr. Alderman for the amount I had ageed to pay him for his stock. I tried to negotiate for money in New York, Boston, Philadelphia, Baltimore, St. Louis—anywhere I thought there was any chance of success. Finally, Mr. R. S. Hays, who was then first vice-president and general manager of the Mo. Pacific railway system, including the Iron Mountain, and whom I had often before importuned for assistance, said to me, in July, 1882, that he would help me out. He said that he would let me have iron rails to replace the light rail that was then on the road, and also to build fifty miles more of road. Upon finding that I could get the heavy rail I then for the first time proposed to change the gauge to the standard. Mr. Hays at first did not approve of this, but after reflecting he assented and said he would furnish me a couple of large locomotives and such other rolling stock as might be needed. He told me to sit down in his office and write a contract to this effect and he would sign it. He said that while he would furnish material and rolling stock he could not furnish any money. I began to write a contract as between the Iron Mountain Railway Company and the Washington and Hope Railway Company. Mr. Hays, observing this, said he would prefer to deal with me in the matter, observing that he did not think there was much in the Washington and Hope Railway Company. I then wrote a new heading, making the contract between the Iron Mountain railway and myself and the Arkansas and Louisiana railway, which was the road we were going to build. It was then agreed that we should build north as far as Nashville or Center point. Some time later in a conversation on his private car Mr. Hays said to me that he would let me have money also for construction. He was then on his way to El Paso, and he at that time telegraphed to Mr. D. S. H. Smith, the treasurer of the Iron Mountain Railway Company, to furnish me $5,000
614 to commence with. This was in the last part of July, 1882.

On the 1st or 2nd day of August, 1882, I began grading a new road-bed north of Washington and continued to grade north. This grading was not in the territory covered by the charter of the Washington and Hope railway. It was, however, covered later by the charter of the Arkansas and In. Ter. Railway Co., taken out in pursuance of the plans outlined in my understanding with Mr. R. S. Hayes. In the latter part of September, 1882, the Washington and Hope Railway was sold to the Arkansas and Ind. Ter. railway, the latter company assuming all debts and obligations of the former. After this sale work was begun the on narrow gauge, the light rails were taken up and replaced with a heavy rail, and the gauge was changed to the standard. The Arkansas and Ind. Ter. Railway Company authorized a mortgage to secure bonds to the extent of $5,000 per mile. Before the sale of the Arkansas and Ind. Ter. railway to the Arkansas and Louisiana Railway Company I had changed the gauge of the road from Hope to a point about seven miles north, where the old road-bed was abandoned and a new bed graded. On this seven miles heavy iron rails were put down.

About ten miles of new road-bed was graded, and about seven miles of new standard-gauge was under iron. On account of this work the company had delivered me $50,000 of their first-mortgage bonds, and I had paid them to the Iron Mountain Company. At the time of the sale to the Arkansas and Louisiana Railway Company, on June 17th, 1883, the Arkansas and Ind. Ter. railway was largely indebted to me. This debt was assumed by the purchasing company and was considered in the construction contract afterwards made with that company.

Qu. At what time was the construction contract between you and the Arkansas and Louisiana Railway Company ratified?

Ans. On May 20th, 1883, I think.

Qu. Had the permanent organization of the company been effected previously?

Ans. Yes; permanent organization was effected.

Qu. Who were the officers and directors who were elected at the permanent organization?

Ans. W. H. Carruth was president, R. B. Williams was secretary. These, with A. B. Williams, H. B. Holman, Thos. Simms, Paul F. Beardsley, W. P. Hart, J. K. Jones, and J. D. Conway, constituted the board of directors.

Qu. Were you not a director then?

Ans. No; I understood that as a director I could not legally contract for nor be interested in a contract for construction with the company. At the election of the permanent directors it was proposed to elect me, but I declined, stating to the meeting that I desired to contract for the construction of the road, and that I was advised that as a director I was prohibited from being interested in any construction contract.

Qu. Was Mr. Paul Beardsley elected a director then, and was he present when you made this statement?

Ans. He was elected a director at that meeting. He was
615 present and heard what I said in reference to the contract. I had, however, previously told him that I could not be a director and why.

Qu. Had you told Mr. Paul Beardsley then that you were going to take a contract for the construction of the road?

Ans. Yes; I had told him just how I intended to proceed. I had explained my intentions quite as fully to other parties, perhaps to A. B. Williams, to W. H. Carruth, and I think to R. B. Williams and others.

Qu. In your conversation with Mr. Paul Beardsley previous to making the construction contract, when talking of it, did he show by any expression or act that he understood that he was interested in it, or that he claimed any interest in it or any ownership in the road?

Ans. I cannot remember any single act that he did or anything that he said that gave me any suspicion of any such claim or intention. I had not probably forgotten my agreement to sell him the stock, but at the time it was made I regarded it purely as a stock transaction. As I understood it, if he had paid me for the stock

and taken it he would have owned just the $33,250 of stock and no more, unless he had by some way acquired additional stock by additional purchase or for value received. It was not my understanding at the time I agreed to sell him the stock nor has it been at any time since that I could compel him to take the stock and pay the eight thousand dollars and interest, even if he had the money. I kept no copy of the memorandum, and if I had a copy, or the original, it was not binding upon him, he not having signed it. Owing to the length of time that had passed without reference to it I suppose it had been abandoned long before.

Qu. You say you did not consider that you could at any time have compelled Mr. Paul Beardsley to take the stock. Of what effect, then, did you consider the memorandum you gave him?

Ans. I understood it to be virtually giving him an option on that much stock.

Qu. At the time you entered into the construction contract with the Arkansas and Louisiana Railway Company how much stock did you have in that company?

Ans. I had in all $92,000 at most. I think, however, that I had $82,000 in my own name. I had also had in my possession $10,000, which I had put in Paul Beardsley's name, but which also belonged to me. This stock was not delivered to Mr. Paul Beardsley nor was it intended to be. The balance of the $100,000 was held by the directors.

Qu. Was this stock obtained from the company for value received; and, if so, how?

Ans. It was obtained for value received. It was issued under the contract of purchase to replace the $100,000 of Washington and Hope stock.

Qu. Was the stock you had agreed to sell Mr. Paul Beardsley to come out of this stock?

616 Ans. Yes; if he had called for his stock it would necessarily have come out of this.

Qu. What other stock of the Arkansas and Louisiana Company was issued at the time you made the construction contract?

Ans. None.

Qu. Were any other stock or bonds authorized at that time; and, if so, for what purpose?

Ans. The Arkansas and Louisiana Railway Company had, in a regular and legal way, authorized the issue of $20,000 stock per mile and the issue of $15,000 per mile of first-mortgage bonds. The purpose for which these bonds and stock were to be used was defined in the resolution which authorized them. They could only be legally used for construction. As I remember, the president and secretary were authorized to sell the stock and bonds or any part of them for cash, if they could be so sold, and to use the funds so obtained in construction, or they were authorized to contract for the construction of additional road, paying therefor in stock and bonds or part in stock and bonds and balance in any proceeds of stock and bonds that might be sold.

Qu. Were any of the stock or bonds sold for cash?

Ans. No; I think not; I do not think any could have been sold for cash at that time.

Qu. Were the provisions of your contract with the company consistent with the authority and purposes for which this stock was authorized?

Ans. Yes; I think it was exactly in accordance with the intention of the issue of the stock and bonds.

Qu. With whom did you make the construction contract?

Ans. I made it with the directors. I drew the contract and submitted it to the president and secretary, who approved of it. It was then submitted to the directors at a meeting called for that purpose, and was unanimously approved and ordered ratified by the directors.

Qu. Was Mr. Paul Beardsley present and acting as a director at this meeting; and, if so, did he join in the execution of the contract?

Ans. He was present and acting as a director. He voted to ratify the contract.

Qu. Did he know the conditions of the contract?

Ans. Yes; the contract was read over and discussed at that time, but he was fully acquainted with the condition of it before. I prepared it in my office, in Washington, and it lay there for some time. He read it over there, and asked me if I had any objections to his taking it home to read at his leisure. I consented, and he took it and had it a day or two. When he returned it I asked him if he saw any defects in it or would suggest any improvements to it. He said substantially that he thought it was a good contract and covered the whole ground.

Qu. Did he then or at any other time say or intimate to you that he considered himself a party to or interested in this contract?

617 Ans. No; not then nor at any other time.

Qu. In making that contract did you intend to include him as a party, or did you make it in good faith as between you personally and the company?

Ans. I made the contract in perfect good faith with the company, acting for myself only, and without any thought of his having any interest, either legally or morally. If I had intended to include him in the contract I would have made him a party to it and had him withdraw from the directory. Every member of the directory was, as I think, a personal friend of mine and also of his. I was on intimate and confidential terms with all of them, and so was he, as I think. If he intended to be included in the contract or thought he had an interest in it, or if I had intended that he should be a party in interest, there was no reason whatever for any concealment and collusion, or for misleading the other directors, or for doing what we both knew was contrary to law. His withdrawal from the directory would have left a greater number of directors than the law required.

Qu. Is there any connection between this contract and the stock you acquired under it and the stock you previously held in the company?

Ans. None whatever.

Qu. Did you make this contract with the company and acquire the stock and bonds under it by virtue of the fact that you were the largest stockholder and were therefore able to dictate such terms and conditions as you chose?

Ans. Not at all. There was no dictation at all. I conferred with the members of the directory and they approved of the contract. There was no solicitation or influence used.

Qu. What understanding had the directors with you and what considerations influenced them to make the contract with you?

Ans. The contract sets forth exactly what was understood all around. The directors, with one exception, were very anxious to have more road built. I knew, and I think some of the directors knew, that the road could not sustain itself unless extended. I had made such arrangements with the Iron Mountain railway as made me sure of my ability to extend the road as far as Nashville, in Howard county, as a standard-gauge road. We believed that with this accomplished it would be possible to go on and build it across the State. The members of the directory were fully advised of my understanding with the Iron Mountain Company. I think they believed in my ability to build the road, and therefore contracted with me. I believe they would have contracted with any outside party on the same terms. I have no doubt that as between myself and an outside party I would have had the preference.

Qu. Would you as a large stockholder have consented to such a contract with an outside party?

Ans. Yes; if I had not been able to build the road myself or seen a reasonable chance of being able to build it in the near future, I would have been glad to consent to such a contract with
618 an outside party who would build it at once. The stock of the Washington and Hope railway at that time was, in my opinion, of no value. The stock in the extended road could hardly fail to have some value.

Qu. Then you say that this contract was one which a "*bona fide*" stockholder, one who had bought his stock and paid value for it, would have agreed to?

Ans. Yes; I do. All the parties consenting to it were "*bona fide*" stockholders except Mr. Paul Beardsley, although the amount they held was not large. My original contract with the Washington and Hope Railway Company shows this very plainly. The stockholders in that company had subscribed for their stock at its face and paid cash. They had graded and bridged the road. They had obtained a grant of land from the State. They then contracted with me, a total stranger, owning none of their stock, to finish their road. They gave me as a consideration for building the balance of it, not only the stock which would be created by the new construction, but the road-bed they had built, the land the State had given them, the stock for which they had previously paid, and in addition they undertook to pay me, upon completion of the work, ten thousand dollars in cash. That contract was very much more favorable to me by comparison than the contract with the Arkansas

and Louisiana Railway Company. In the last contract the stockholders kept all of their stock, which they expected to have greatly increased in value. They gave only the securities which I practically created by building the road, and they saddled upon me as contractor their debts which they were unable to pay.

Qu. If Mr. Paul Beardsley had proposed it when you were about to make your construction contract with the Arkansas and Louisiana Railway Company would you have associated him with you as a party to it?

Ans. No; I would not.

Qu. Why not?

Ans. A good and sufficient reason would have been that he was unable to contribute anything towards carrying it out. There was, however, a stronger reason with me. I would not have gone into any arrangement that would have resulted in a partnership with him.

Qu. Would not the same reasons have prevented you from selling him such an interest, one-third, as he claims you did sell him when you agreed to sell him the stock in the Washington railway?

Ans. Yes; I would not then or at any time have sold him such an interest as would have created a partnership. I simply agreed to sell him $83,250 in stock.

Qu. Have you done business as a partner—that is, in partnership—before?

Ans. Yes; I have done business in partnership several times. I once did business in partnership with Mr. Paul Beardsley. The closing up of that business, however, was so unsatisfactory to me that I would not at any time since have been willing to have gone into a partnership with him.

619 Qu. When and where were you in partnership with him before?

Ans. I think it was in the years 1867 and 1868. It was in Virginia.

Qu. You said you began to make road-bed north of Washington about the 1st of August, 1882, working outside of the territory covered by the charter of the Washington and Hope Railway Company. Were you then building a road without any charter? If so, how did you obtain your right of way, under what style were you doing the work, how long did you continue to work this way, where did you get the money, how did you disburse it, and how much did you expend before you had a charter to cover the work?

Ans. Yes; I was then building a road without a charter. The land through which we were working belonged to friends to the enterprise, and they permitted us to work through and gave a right of way. The money expended was obtained from the Iron Mountain Railway Company under the agreement made with Mr. Hayes. It was disbursed to a very large extent under my personal supervision. The teams and labor were paid weekly at the office of Jett & Sims, at Washington, and generally in my presence. I kept my account with Mr. Carruth at that time, but a good deal of the money we used then did not pass through his books, but was taken direct

to Jett & Sims and there disbursed for labor, &c. This continued through August and September, until the charter of the Arkansas and Ind. Ter. Railway Company was perfected to extend over the route on which we were building. During this time I think I expended about fourteen thousand dollars.

Qu. Did Mr. Paul Beardsley continue with you; and, if so, in what way?

Ans. He came originally as stated and went to work for the company. After I took the road he continued with me in the same way.

Qu. Did you employ him at the same price?

Ans. At first no change was made in the price. I afterwards, about the 1st of December, 1883, advanced his salary to one hundred dollars per month, and about February 1st, 1885, he was furnished a dwelling rent free.

Qu. How long did he remain in your employment, and in what capacity?

Ans. Until February 15th, 1886. He acted as assistant superintendent and master of transportation. He did various kinds of work. In my absence he was in charge of the operating department of the road. He was never in charge of the accounting or financial department of the road.

Qu. How did you settle with and pay the Iron Mountain railway for the money advanced you to build the road?

Ans. I settled with the Iron Mountain Railway Company June 11th, 1885. I did not pay them. I left in the hands of Mr. R. S. Hayes as collateral two hundred and forty first-mortgage bonds for one thousand dollars each, which had been paid me for construction. I agreed to pay them the net earnings of the road not needed for improvements on the road, but not less than twelve thousand dollars per year. I am held personally responsible for the debt. A copy of my contract of settlement with the Iron Mountain Company I exhibit, marked A. It was considered necessary that the Arkansas and Louisiana Railway Company should be a party to this contract, because the security of the debt depended on compliance with the condition that no more bonds should be certified on their part of the road until it was paid. To insure this the Arkansas and Louisiana Railway Company was made a party. The term J. D. Beardsley and associates has no reference whatever to Mr. Paul Beardsley. The word associator was used to cover the interests of which Mr. Geo. C. Smith was the representative and for whom he held an assignment of one-half of the construction contract, as shown on the back of Exhibit —. This contract with Iron Mountain railway also recites in brief the understanding had verbally with Mr. Hayes at the first.

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Qu. How came you to make the assignment of this construction contract? State this fully.

Ans. Some time in July, 1883, Mr. Hayes telegraphed me to meet him at Hope. I went, and, after talking over the matters for which he had desired to see me, the conversation turned upon the road, and he finally said: "We think you could afford to give some of

your stock." The proposition was entirely new to me, and, to get time to think of it, I said I would come to St. Louis and see him about it. He replied: "That will be all right; there is no hurry about it." This was all that was said about it at that time. Some time afterwards, in August, I went to St. Louis, and the subject was then discussed, and I consented that they should have half the stock of the road. I told Mr. Paul Beardsley of my first talk with Mr. Hays at Hope after I came back to Washington and before I went to St. Louis. He did not then show in any way to me that he considered himself a party in interest. After I came back from St. Louis I told him what I had done there, and he did not then say anything that led me to suppose he considered himself a party in interest. I have heard his deposition in regard to this matter. He is mistaken in his memory and in the remarks he attributes to Mr. Hayes. I have related the matter exactly as it occurred. With an even division of the bulk of the stock the stock of the directors was an important factor. Mr. Hayes asked me if I thought the directors would be willing to endorse their stock and deposit with the rest of the stock. I thought they would and they did so. Mr. Paul Beardsley came at my request to endorse the stock which I had put in his name. At that time, though all the stock was in my possession, I had not examined it carefully, and I was under the impression that only one certificate of twenty shares had been put in his name. That also was his impression. I was therefore quite surprised upon examining the stock since this suit has been commenced to find that there were four certificates of twenty shares each in his name that had never been endorsed. It is my impression that I only intended to have one certificate issued to him, and that five were issued to him instead through the secretary misunderstanding me. It was desired that this transfer to the
621 Iron Mountain Company should not be disclosed, and I think it was never generally known. I told it to Mr. Carruth, A. B. Williams, H. B. Holman, R. B. Williams, and perhaps one or two others.

Qu. Mr. Paul Beardsley says in his deposition that he and you kept an account against each other before December, 1883. Is that correct?

Ans. I think he is mistaken. I have never been more careful at any period of the life of the road to have an accurate and careful account of everything kept than during the period he mentions, nor was it ever more necessary. The Washington and Hope railway did not earn sufficient to afford to keep an auditor or even a bookkeeper. I always looked forward to the time when the road would be able to have an accountant, and I was very careful to try to get everything either on the books of Mr. Carruth or on the books of the only agent we had, who was at Washington, intending to afterwards gather them into a set of books. During this time Mr. Paul Beardsley was in the habit of getting money from the agent and from Mr. Carruth also. I checked up the agent's books and Mr. Carruth's account every month, I found that Mr. Paul Beardsley overdrew his salary regularly. At the time I advanced his salary

I think his overdraft was about four hundred dollars. Why or on what ground he should now consider that he was not on a salary at that time I am at a loss to understand. I was on a salary all of that time, and never took money without having a charge made of it. Almost immediately after I had advanced his salary and directed him not to draw any more money from the agent I found when I called for our balance at Mr. Carruth's that some of — was withheld to cover a deficiency of Mr. Paul Beardsley's account there. The amount was small, and it was allowed. It kept getting a little larger until in the latter part of December, 1884, when I directed Mr. Carruth to credit him on Jan. 1st with whatever it might take to balance his account and charge the road with it. I also told Mr. Carruth that after that he must collect any overdrafts Mr. Paul Beardsley should make with him. Mr. Paul Beardsley afterwards thanked me for the present.

Qu. You speak of two hundred and forty first-mortgage bonds left in the hand of Mr. R. S. Hays. How did they come to be in Mr. Hays' hands? Where did they come from?

Ans. Under the terms of the construction contract a portion of the road was examined and accepted and the proper certificates were made. Thereupon, in accordance with the provisions of the contract, the directors gave me an order on the trustee, the Mercantile Trust Company of New York, requiring them to certify and deliver to me the two hundred and forty first-mortgage bonds. I gave Mr. Hayes an order for these bonds on the Mercantile Trust Company, with the understanding then that they should be held by him until a final settlement with the Iron Mountain. I file certified copies of affidavit of the president, resolution and order of the directors to the Mercantile Trust Company, and my order to Mr. Hayes. These are marked Exhibits B, C, and D.

Qu. Did you explain to Mr. Paul Beardsley at the time
622 that you agreed to sell him the stock that the Shelby county material belonged to you individually?

Ans. Yes; I explained to him fully that the road would owe me personally for it if he had that stock at that price. He understood the situation perfectly before. He had asked me previously whether I would in my settlement with Alderman charge the material at the cost when purchased or at its value when put into the road. I had told him I would charge it at what it was worth when put in the road. When I bought the material, in July, 1879, everything was very low; I think iron rails below thirty dollars per ton and other things in proportion. At the time I put this material into the Washington and Hope road iron rails of this weight were worth about eighty dollars per net ton in St. Louis and all other railway material had advanced in proportion. If Mr. Paul Beardsley had taken the stock and paid for it then the material would have been a debt at its value when put in. As the case stood, however, regarding the purchase by Mr. Paul Beardsley as abandoned, the interest of the other parties, the directors, was so small comparatively that I did not regard it material at what price I got credit for it or whether I

had credit for it all, as it was very much like taking assets out of one pocket and putting them in the other.

However, when I assigned the interest in the construction contract it made a difference. I mentioned the matter to Mr. Hayes. He told me their interest would be entirely satisfied with whatever was equitable. I thought, in view of the liberality of the Iron Mountain in all matters, that it would be wise to take credit on our (lessees') books for the material only at what was obtained for it as old material. The proceeds of all this old material went into the general business of the lessees. Several thousand dollars of it went direct to the St. Louis Bolt and Iron Company on account of the indebtedness of the Washington and Hope railway. To the best of my recollection the amount received for all the old material was from $11,000 to $12,000, which included about $5,000 for the material got from Tennessee by me.

Qu. Have you read the statements of Mr. Paul Beardsley made in his deposition as to the conversations between you and he prior to your written agreement to sell him the stock as to the interest he was to acquire by his purchase and the manner in which you were to be paid? If so, state whether his recollection is correct.

Ans. I have heard his statements read. He is mistaken. I am able to be positive for two reasons. While I was sincerely desirous to assist Mr. Paul Beardsley financially, if I should be able, I had not forgotten the difficulty which had arisen from our previous partnership. I would not then nor at any time since voluntarily have made a partnership with him, and I never intended this sale to be anything other than a stock transaction. This was in my mind also when I made the memorandum he exhibits. In regard to the payment, he told me he had a valuable mine with valuable machinery in it. He told me there was a small incumbrance on it, perhaps $1,000, in favor of a Mr. Drexler, who had been a former partner of his. I never heard of the note or claim he speaks of until a
623 good while later. My understanding was that this claim was $1,000 or $1,200. It would not, therefore, have paid for the stock. In a suit to recover this claim afterwards he was defeated.

Qu. You state that the Washington and Hope Railway Company did not pay you all your salary. How much of that salary remains unpaid?

Ans. My salary was $2,000 per year. I am quite positive that I did not draw over $1,500 in the two years; there would be $2,500 due yet.

Qu. You say you have, then, still $2,500 due you from the Washington and Hope railway. What two years do you cover with this deficiency?

Ans. During the two years I operated the Washington and Hope railway, ending with 1882. After I was constructing on my own account and as lessee the arrangement as to salary was suspended.

Qu. You heard what Paul Beardsley said about your using the money from the Baltimore and Ohio R. R. Company for your own purposes, and that you have never been charged with the $125 paid for collecting that. What do you say to that?

Ans. He is mistaken about that. The amount of the Baltimore and Ohio check was between $500 and $600, and the amount credited, some $433, is intended to be the balance after the $125 was deducted. The check was converted into money and the money went into the general business. The books of the agent at Washington showed the amount and the disposition of the money, but they were burned a couple of months before the auditor's books were opened. The amount, $433, was put in from memory. I think it correct, however; I am sure it is nearly correct. The additional $200 was paid to me personally by Mr. Spencer, vice-president of the Baltimore and Ohio Railroad Company, some time later. There were no costs on that, and, like the other, it was put into the funds of the road. The cost of bringing my family to Arkansas was small, probably less than $50. I had passes for myself. There were two adults and three children. I remember that I got a reduced rate from Parkersburg to St. Louis for them. From St. Louis the Iron Mountain granted me free transportation for all of them.

Qu. When Mr. Paul Beardsley went to New York in the fall of 1879 did he go in the interest of the Washington and Hope railway or by your request?

Ans. No, sir; I met him at St. Louis on his way from California. I was glad to see him and invited him to come down to Arkansas and spend some time with me. He hesitated about it on account of being in a hurry to go to New York. He finally consented to go. I got him passes and he came with me to Washington, but I think he did not remain over one day.

Qu. How long would it have taken a one-third interest in the Washington and Hope road, if Paul had had it, to have paid the $8,000 after allowing him for the support of his family?

Ans. With the experience acquired since I can say it would never have done so.

624 Qu. Do you notice anything in Mr. Paul Beardsley's deposition you wish to correct?

Ans. He is mistaken in his memory of my letter to Mr. Alderman about the purchase. I did not say anything about going home Christmas and then arranging terms of payment. I simply said I would take his stock or investment if he would give me time to pay for it. There has never been any further arrangement or talk about the time since. He is in error in saying he went regularly to work after the purchase if he intends by that that be was not regularly at work before that. He is also mistaken in saying he took entire charge of the operating department of the road. He was never at any time in entire charge of it except temporarily, when I was absent, and there were well-defined limits to his authority then. He is mistaken in saying the entire business of the road was under his control in my absence. He never at any time had control of the financial or accounting business of the road. His memory is at fault when he says he was quite busy when I handed him the memorandum he exhibits. He was not engaged at that time. He read it then before putting it in his pocket. He is also mistaken as to the date of the first contract with the Iron Moun-

tain. There was no conversation or agreement at the time I agreed to sell him the stock that we should both devote our time and energy to the work of the company, nor was it agreed that he should pay his purchase out of the profits. We as a company or as two individuals never had any arrangement with the Little Rock Oil and Compress Company. Whatever arrangement existed with that company was personal between them and myself. Mr. Paul Beardsley had no connection with the matter in any way. In order that the account might be well kept I asked Mr. Wheeles, the auditor, to keep it, which he consented to do. I arranged with outside parties to buy the seed. Some time after the season closed and the matter had passed out of my mind Mr. Wheeless called my attention to a balance of the money on hand, and asked what was to be done with it. I told him to pass it to my credit at Mr. Carruth's, but it then occurred to me that as the money had gone through the auditor's books it might be considered by the Iron Mountain interest that it should not have gone to my personal credit. I asked Mr. Wheeless if he thought, in view of the other interest of which he was fully advised, it should go to my credit. After considering the matter he said there could be no reason at all for putting it in the general fund. I then told him to credit me with it. A little later I thought of Mr. Paul Beardsley, and thought it would be a nice thing to give him a part. The manner of dividing it had no reference to any interest of his in the road, which I did not then suspect. It was intended as a pure gratuity. As we were short of money then I instructed Mr. Wheeless not to make the entries at that time, and they were not made until later. It was several days, and I think some weeks, later than this before Mr. Paul Beardsley knew anything about it. Mr. Paul Beardsley has forgotten about seeing the balance-sheets, I presume. I have shown him several of them
625 in addition to the one he saw with Mr. Wheeless. In the schedule of lands which he claims as belonging to Ark. & La. Railway Co. are lands that belonged to me before he came to Arkansas. The statement of the net earnings of the Washington and Hope railway are entirely incorrect. Up to the sale of the road the earnings did not exceed about $1,200 per year, and it can easily be shown that the operating expenses, salaries, and contingent expenses amounted fully to that sum or more.

I have read over carefully the letters attached to plaintiff's deposition, and I don't find anything there that tends to make me think my memory is at *de*fault in the statements here made. When he was going to New York he stated that he had no doubt that he could obtain all the money that would be needed for extension. I told him I would be glad if he could. While he was there several letters passed in reference to getting money there, which he represented he was negotiating for. Soon after that I received a letter from him saying he could not accomplish anything in connection with his business in New York, and asking him to give me a place on the road. I wrote him a general reply to this letter, and in it I told him that our earnings were so small that I did not feel that we could afford to employ him, and told him I thought he could do better in New

York. To this letter he replied that he could not do anything at present in New York; that he had his family on his hands; that he thought he could be worth $75 per month, and urged me to employ him at that price. My letter of October 24th, which he exhibits, was my reply to this. It is very apparent that the term "we," as used in these letters in reference to the extension of future operations of the road, could not in any sense have applied to him, as he had at that time not bargained to purchase, and one-half of the stock was then owned by Mr. Alderman. I have no memory of it, what was in his letter that mine of Oct. 24th, 1881, was a reply to which led to the remark about the purchase of Mr. Alderman's stock. In writing letters and in speaking of business I habitually use the word we instead of I. Both Mr. Wheless, our auditor, and Mr. Carruth, our treasurer, could establish from my letters to them a stronger basis upon which to claim a community of interest than is shown by these letters of 1881. It is my conviction from an examination of the mutilated letter of Oct. 8th, 1881, exhibited by the plaintiff, that it is the last letter I wrote to him in New York before that of Oct. 24th, 1881. In this letter of Oct. 8th, 1881, as I think, I declined to employ him on the road for the reasons before given. I think that part of the letter which is missing contained my advice to him that we could not employ him and the reasons therefor. Referring to the letter of February 7th, 1886, I notice that in writing that I fell into some inaccuracies as to dates and amounts. The matter had not then been recalled to my mind for years. I wrote with no suspicion of what has happened since, and did not stop to get data or to think carefully. I was in error in saying that Mr. Alderman began to offer me his stock subsequent to Mr. Paul Beardsley's arrival, when, in point of fact, he began to offer it eight or ten months before. I was wrong in consequence as to the
626 time of my purchase of the stock and of my agreement to sell the plaintiff. I was led to use the term "two-thirds of the purchase from Mr. Alderman" from his use of the same form in his letter to which this was a reply, and also from a general memory that the stock bargained to him was about two-thirds bought of Mr. Alderman. I was led in the same way to put the amount $33,333.33 in stock from overlooking at the moment of writing that I had not held the whole $100,000, and remembering in a general way that the amount I had agreed to sell him was about one-third of what I held at the time.

Qu. Did you have a correspondence with the plaintiff in regard to this claim which embraced other letters besides your letter of February, 1886, to him, which is exhibited with his deposition? If so, file the same as exhibits with this deposition.

Ans. There were additional letters. I exhibit them with my deposition, marked F and G. That part which refers to the matter in dispute is marked with red ink. The letter exhibited by the plaintiff of Feb. 7th, 1886, is the answer to that here exhibited, marked G.

Qu. Have you heard the depositions of Geo. Rector, J. G. Yowell, and John Bell in reference to your having told them that Paul

Beardsley had an interest; that you had sold him an interest or given it to him, &c., &c.?

Ans. Yes; I have heard these depositions. I was never on intimate terms with any one of these men. I have no memory of ever referring to anything of the kind in any conversation ever had. If any reference was ever made to anything of the kind it was some reference to my agreement to sell in 1881. Mess. Rector and Yowell are partners in business. All three of these men are personal enemies of mine, and have been so for over two years.

Cross-examination:

Q. What amount did you pay for the old iron, fish-plates, &c., bought by you from Shelby county, Tennessee, and put in the Washington and Hope railway?

Ans. As I remember I paid ten dollars per ton in the track and removed them at my own expense from Brownsville, Tenn. I was also at the expense of taking them up out of the track and bringing them to the line of the Louisville and Nashville road.

Q. Is it not true that you paid $2,000 for the purchase and removal of that material, and that the books kept by Carruth, the treasurer, show in the aggregate that amount?

Ans. No; one of the entries referred to is $700 and is of date Dec. 19th, 1879. No part of this money went to pay for the material bought from Shelby county. The second entry of $350, sight exchange on St. Louis, was not, I think, used for that purpose either. The item on the treasurer's books of $750, to pay on engine in Little Rock, was probably used in part to pay for the overhauling of the engine in the Little Rock shop. Their bill was not so large as that. My memory is that it was $615. In regard to the entry of April 30th, 1880, no part of that money went to pay for material from Shelby county.

627 Q. For what was the first item of $700 and the last item of $200 mentioned in your last answer paid?

Ans. The $700 I took with me when I went home at that time. I went through Memphis, expecting to take up the material, but did not do it, and went on home. I think I brought the money back with me to Washington, Ark. The last item of $200 was sent to pay a note in favor of Taylor & Carroll, in Memphis. This is my recollection, and I am quite sure I am correct.

Q. Can you approximate the total cost of the material mentioned to you laid down in Washington?

Ans. I think the actual cost of the material at Washington to me was between $2,500 and $3,000. I would like to state that I testify as to these things from memory of transactions which took place six or seven years ago, but believe that I am substantially correct.

Q. On the books kept by Mr. Carruth, the treasurer, I find an item in the account of J. D. Beardsley wherein he is charged on Nov. 16th, 1882, to cash paid Powers, $271.16, and on January 5th, 1883, to cash paid Thomas Essex, Mitchell land, $307.85. Are

those the lands that you mentioned in your deposition as having been bought by you before Mr. Paul Beardsley came into the road?

Ans. Without referring to the entry of Nov. 16th, 1882, of $271.15, I am unable to say what lands this was paid on, as we bought several tracts of land from the Iron Mountain, whose agent Mr. Powers was. In reference to the last item of January 5th, 1883, of $307.85, I think that that was a final payment on some lands I did buy before Mr. Paul Beardsley came into the road.

Q. Do you know if anything more was paid for those lands; if so, how much?

Ans. Yes, sir; I know there was more, but I can't tell how much.

Q. When were those lands bought, Major—that is, when were the lands that you claimed to have bought before Mr. Paul Beardsley came into the road?

Ans. These lands were bought from the Iron Mountain by Charles Mitchell. I do not know at what time he bought them. I took the purchase off his hands before Mr. Paul Beardsley came to the road. I paid him what he paid on account of them, and it is my memory that I paid one cash payment in addition before those final payments.

Q. Were they not bought while Alderman owned an interest in the Washington and Hope railway, and for the benefit of you and Alderman?

Ans. I am not able to give the date at which the purchase was made from Mitchell, but I think it was during the construction of the road. If Mr. Alderman in his settlement had desired to have been a party to the purchase I would have been willing.

Q. Were they not paid for out of moneys arising from the sale of property or operating the Washington and Hope railway or its successor or successors?

Ans. I am not able to say in regard to first payments, but I think they were made before we began to operate the Washington and Hope railway. The final payment was probably from
628 funds obtained from the Iron Mountain for construction purposes, directly or indirectly—I mean that it was probably either directly or indirectly from that source.

Q. Did not the funds that were paid for these lands come from the same source or sources that were used in the construction of the railway?

Ans. I think that directly or indirectly the latter payment did. I notice that the amount charged for the final payment is charged in the account of J. D. Beardsley proper, and it is possible and probable that that particular money was earned by the road, but a large sum of money which I borrowed directly from the Iron Mountain railway for construction had previously been credited to that *amount* in which at that time the earnings of the Arkansas and Indian Territory were kept. Considerable sums of this money, which I had borrowed for construction purposes and which was credited in that account, was diverted to pay the debts of the Washington and Hope railway. As the Arkansas and Indian Territory Railroad Company had assumed these debts and were unable from their earn-

ings to pay them, it would follow that — $307.85 was paid out of the actual earnings of the road at the time it was in consequence of my having paid other debts of theirs with construction money borrowed by me.

Q. Upon what kind of security was the construction fund that you have just mentioned as borrowed from the Iron Mountain based?

Ans. I don't think they had any security at first. My memory is that the first payment they got was $50,000 in the bonds of the Arkansas and Indian Territory Railroad Company. Some time after we made our contract I voluntarily took the old Washington and Hope stock and offered to leave it as security for advances. Captain Hayes, first vice-president, said he considered it worthless, but I did leave it with Mr. Geo. Smith, ass't sec. of the Iron Mountain road. He was also private secretary of Mr. Hayes. I left it after Hayes said he did not want it, and I have no reason to believe that Hayes ever knew that it was left there.

Q. Did you not have a written contract with Captain Hayes relating to the loan of the construction fund that you have mentioned?

Ans. I did not. Captain Hayes told me verbally, on his car en route between Malvern and Texarkana, that he would let me have the money necessary for construction. I had a written contract with the Iron Mountain road in reference to iron, which, however, was cancelled by a verbal agreement, and was never carried into effect.

Q. In your examination-in-chief you testify in regard to the contents of the first written contract you had with Captain Hayes or the Iron Mountain road. Was not that contract in writing? Were you not asked to produce the original or a copy of it; if so, why have you not produced it?

Ans. It was in writing, and is the contract to which I referred in my previous answer. I believe that I never was asked to
629 produce a copy of it. I don't think I was ever asked to produce the original until here this morning. I was asked at Washington by Mr. Paul Beardsley to show him the contract. I had previously had Mr. Wheless, our auditor, search through the safe and our papers for the contract. He failed to find it. I have myself made two careful searches, not only through our papers at the office, but also at my residence, and I am unable to find it. For the information of the plaintiff I have telegraphed to the Missouri Pacific attorney requesting *them* to send at once to the attorney of the plaintiff a certified copy of that contract. This is the contract that was verbally annulled between myself and Captain Hayes.

Q. Recurring to the money furnished to purchase the lands referred to as having been bought by you before Paul Beardsley came into the road, is it not true that the first payments made came from the same source that moneys did used in the construction of the Washington and Hope railway?

Ans. Necessarily so, as I was furnishing my private funds for the Washington and Hope railway.

Q. Wasn't Alderman also furnished money to build the railway, and did not the citizens of Washington also furnish money to aid in building it, and did not the money used in purchasing these lands come out of these funds?

Ans. Alderman was sending me money which I understood from him that he charged to me personally pending a final settlement. The citizens of Washington, I understand, had expended something over $11,000 on the road-bed before I came to Washington, but they never furnished any money to assist in the construction after I came. I received money from West Virginia and sometimes brought it myself. Without any actual knowledge of the exact date of the purchase I am unable to say out of which fund the payments were made. I hardly know that fund is the proper term to use. There were no two funds kept. The money sent to me by Alderman was charged to me; it was paid out of the money I had in hand.

Q. Were not these amounts furnished by Alderman and used by you in the manner above indicated and to be accounted for in a settlement between you and Alderman when the road was completed? Answer yes or no.

Ans. In order to answer that question yes or no it is necessary that you explain what amounts you mean and what you mean by the term "above indicated."

Q. Were not the money, iron, material, &c., furnished by the St. Louis, Iron Mountain and Southern railway to aid in constructing the road from Hope to Nashville based upon the credit of the railway operated by you? Answer yes or no.

Ans. I believe they were not.

Q. Were not the bonds and stock of said railway hypothecated as collateral security for the money and material furnished? Answer yes or no.

Ans. The bonds were not hypothecated, nor was there any provision in our contract or understanding for any hypothecation of bonds or stock. I afterwards of my own motion took the
630 stock of the Washington and Hope railroad belonging to me and offered to deposit it as security. Captain Hayes declined to receive it, saying that he considered it as worthless. I left it, however, in the outer office with Mr. George C. Smith, his secretary.

Q. Has not the St. Louis, Iron Mountain and Southern Railway Company all of the duly issued and certified bonds of the Arkansas and Louisiana Railway Company as collateral security for money and material furnished by it to aid in the construction and equipment of the Arkansas and Louisiana Railway Company? Answer yes or no.

Ans. Yes.

Redirect:

Q. You state in next to the last question asked you on cross-examination that bonds and stock were not hypothecated to procure the money for construction of a road to Nashville, and in the next

answer you say that the bonds are now held by the St. L., I. M. & S. R'y as collateral security for money advanced you for construction. Please explain these answers.

Ans. I understand the question of the attorney for the plaintiff first referred to to refer to a hypothecation for the purpose of obtaining the money before or during the time it was being furnished. I answered on that understanding. A good while after all the money had been furnished we had a settlement with the St. L., I. M. & S. R'y Co., or, to be more definite, with Captain Hayes, and it was then agreed that the two hundred and forty first-mortgage bonds which had been paid to me by the Ark. & La. Co. remain in the keeping of S. R. Hayes, first vice-president, until full payment of the debt. That settlement was made on June 11th, 1885, and the contract then made fully sets forth the conditions of it. It is Exhibit A with my deposition.

Q. If you wish to make any explanation in regard to the exhibit attached to the deposition of W. H. Wheeless, marked Exhibit No. 10, you can do so in answer to this question.

Ans. Explaining Exhibit No. 10 attached to deposition of Mr. Wheeless, which I understand to be a copy of the account of the St. Louis, Iron Mountain and Southern Railway Company against us for advances made under my agreement with Mr. Hayes, I have to say I made the agreement as stated in my deposition, and under it I obtained the money in part first and some time later the material. I mean that I began to get the money before I began to get the rails, &c. At the time this money began to be obtained—that is, about August 1st, 1882—the Arkansas and Louisiana Railway Company was not in existence, nor until some months later. I never had any talk with Mr. Warner, auditor, about the account and do not know why he headed it the Ark. and La. Railway Company. I noticed the error at the time it was rendered, but did not regard it as of any consequence, as the amounts were correct. I presume the auditor, knowing the name of the road we were building and having no special instructions, naturally headed his account in that way.

631 I attach hereto the certified copies of the vouchers on which I drew the money that is charged in the account—these vouchers, twenty-nine in number, with the letter of Mr. C. G. Warner, auditor of the St. Louis, Iron Mountain and Southern railway—marked Exhibit R, and make the same a part of my deposition.

J. D. BEARDSLEY.

632 H. H. WHEELESS, being introduced by the plaintiff and duly sworn, deposes and says:

Examined by T. B. MARTIN, Esq.:

Q. What business are you engaged in?

A. I am auditor for the Arkansas and Louisiana Railway Company.

Q. What is your age?

A. Thirty-one years.

Q. How long have you been working for the Arkansas and Louisiana Railway Company?

A. Since January, 1884. I would like to modify my reply and say that I am auditor of the constructor and lessee of the Arkansas and Louisiana railway.

Q. Have you any of the letter-heads of that railroad here?

A. I have not.

Q. Are you auditor of the Arkansas and Louisiana Railway Company?

A. I am the auditor of the constructor and lessee of the Arkansas and Louisiana Railway Company and have always considered myself so.

Q. Do you recollect the date of your appointment as auditor?

A. January, 1884.

Q. By whom were you appointed?

A. By Major J. D. Beardsley.

Q. Do you not appear on the letter-heads of the Arkansas and Louisiana Railway Company as auditor of that company?

A. I am on the letter-heads of the Arkansas and Louisiana railway, on which J. D. Beardsley appears as lessee and manager, as auditor.

Q. As auditor have you kept the books and accounts of the Arkansas and Louisiana Railway Company?

A. No; I have not, only incidentally.

Q. How have you kept them incidentally?

A. I doubt very much whether I have ever done any work for the Arkansas and Louisiana Railway Company. I cannot call to mind anything that I ever did that was not done in pursuance of the business of the constructor and lessee.

Q. When did you first hear of the title of lessee and general manager being conferred on J. D. Beardsley?

A. When I opened the books I understood that he was lessee and general manager of the railroad. He had the title of general manager, I first heard, in last September. I heard his title of lessee and general manager at different times. I first heard of the managership in September last. Major Beardsley told me when I opened the books that he was lessee and constructor of the railroad. I heard it at two different and distinct times; one was last September and the other was when I first took charge of the books. He told me he was lessee when I took charge of the books.

Q. When was the title of lessee and general manager publicly adopted by J. D. Beardsley?

633 A. In September it was put on the letter-heads. I think it was about that time. I am not quite certain about dates.

Q. Are the books you kept as auditor labeled; and, if so, how?

A. Yes, sir; they are labeled; they are labeled Arkansas and Louisiana railway. My recollection is that the books were there when I came there. I am not positive. They may have come a day or two after I got there.

Q. Is it not a fact that the books that were labeled were made to order and after you went there?

A. Yes, sir; they were made to order and after I began keeping the books of the road.

Q. Out of what funds were you paid for your services?

A. Out of the funds in the hands of W. H. Carruth, treasurer.

Q. Treasurer of what?

A. He was treasurer of the railroad company, and also kept the accounts of the lessee and constructor, and was treasurer of the company.

Q. I will ask you if on the books you have kept there was not an account transferred from the books of Baird & Carruth, and was not that account in the name of the Arkansas and Louisiana Railway Company transferred from their books to the books you kept in the name of the Arkansas and Louisiana Railway Company?

A. Yes, sir; there was. The account was taken up and distributed to the various accounts in my books. The accounts that I found in Mr. Carruth's books were taken up and distributed to their proper accounts in my books.

Q. How was the account from which you distributed these items on your books headed? Was it the account of the Arkansas and Louisiana Railway Company?

A. Yes, sir; it was headed Arkansas and Louisiana Railway Company.

Q. I will ask you this further question: Is it true that the Arkansas and Louisiana Railway Company, since you began keeping books, as you claim, for the lessee, had any books kept that were kept by you?

A. No, sir; they had not. I kept no books for the Arkansas and Louisiana Railway Company. Your question is a double question. I know of no books that have — kept for the Arkansas and Louisiana Railway Company.

Q. I will ask you, then, if the earnings and all the transactions of the Arkansas and Louisiana Railway Company of which entries have been made in the last two years were not made by you and upon books kept by you?

A. I cannot answer that question yes or no. I consider that all business that has come into my hands belongs to the constructor and lessee.

Q. That is as definitely as you can answer it?

A. Yes, sir; that is as definitely as I can answer it.

Q. Who has kept the account of the earnings and transac-
634 tions of the Arkansas and Louisiana Railway Company within the last two years?

A. I do not know.

Q. Do you know whether any has been kept or not?

A. I do not know.

Q. Can you tell from the books you have kept what the earnings of the Arkansas and Louisiana Railway Company have been within the last two years?

A. I can tell you what the earnings of the road are as managed by the lessee and general manager.

Q. How can you tell that?

A. From the records.

Q. What records?

A. From the books kept by me.

Q. Have you any means of telling from your books how much was paid for the building at Nashville?

A. I could tell by figuring it out.

Q. Do your books show how much was paid J. H. Bell for land at Nashville?

A. Not all of it. My accounts show $800 paid. It was paid $150 in money, and he gave two notes for $650.

Q. I will ask you if there is any entry on these books showing any other payment besides these two.

A. No, sir; not on the books kept by me.

Q. Is there any other entry transcribed from Mr. Carruth's books?

A. No, sir; I am positive of that.

Q. Your books, then, show payments of $800? Please give dates.

A. October 19th and 20th, 1885.

Q. Do you know what land that was for?

A. I do not know what land that was for.

Q. Where did the money come from out of which these payments were made?

A. It was money that was earned by the road under Major Bierdsley's management as lessee.

Q. It came from the earnings of the road?

A. That was not my answer. It came from the earnings of the road while under the management of J. D. Beardsley as lessee.

Q. Did you know whether it was under anybody else's management or not?

A. Not within my knowledge it was not.

Q. Is there any entry on your books showing payments to Rector and Yowell or A. M. Rector for land at Nashville?

A. There are two entries on my books showing money paid to Rector and Yowell.

Q. Can you tell from your books what these payments were for?

A. No, sir; notes were given before I took charge. There were two notes for $500 to these two men which were paid. There was nothing in the notes to show what they were made for.

Q. Will your books there show anything in regard to some iron that was bought in Shelby county, Tennessee, and afterwards sold to some parties in Texas, I think?

635 A. Most of the iron was sold before I took charge. A small portion of it was sold after I took charge. I do not know whether that was iron bought in Tennessee or St. Louis.

Q. Are there any entries in your books showing sales of iron and other material to parties in Texas? If so, state the aggregate amount.

A. My books show notes of the Lampasas street railway for

$2,451.92, which I was informed was for iron sold them. The sale was made before I went there.

Q. Do your books of original entry show what that was for?

A. No, sir; my entries do not show what it was for. It simply says notes of the Lampasas Street Railway Company.

Q. How does the entry read in your books?

A. Bills receivable; old-material account; notes of Lampasas Street Railway Company as follows: Note due April 1–4, 1884, $1,173.25; note due Oct. 13, 1884, $642; note due July 13, 1884, $636.67, aggregating $2,451.92.

Q. Is there any other entry on your books in regard to old-material account?

A. There is a credit of $500 received from the St. Louis Wooden Gutter Company. There is a credit of $12 for some old rails sold to Justin Brothers. The $500 credit was on June 16th, 1884. The $12 one was on July 18th, 1884. On September 2, 1884, there is $1,113.91 for rails and fish-plates sold to the Oak Land and Lumber Company. On December 31st, 1884, there is a credit of $168.21, balance from the St. Louis Wooden Gutter Company. That is all I have on old-material account. There may have been some small entries passed to construction account.

Q. How is that account headed in the ledger?

A. Old-material account.

Q. What do these entries indicate?

A. They indicate old material sold. There was on material on the road when I took charge. It had been put into the road.

Q. Are there any other entries in your books showing sales of old material?

A. I cannot remember any.

Q. Is there any entry on the journal kept by you on page No. 1, of date January 1st, 1884, crediting J. D. Beardsley with the sum of $5,365.50? If so, please give the entry in full in your answer.

A. There is; construction account to J. D. Beardsley; material owned by J. D. Beardsley personally before the commencement of the Washington and Hope railroad, proceeds of which were used in the construction; 105½ tons of 25 lbs. rails, $3,692.50; 2⅜ miles fish-plates and bolts, $300; 12,000 lbs. spikes at 2c., $240; one passenger box and four narrow-gauge cars at $100, $500; cash from B. & O. Railroad Company, $433; cash from B. & O. R. R. Co., $200.

Q. Do these books or any of them show the amount paid for the construction of Major Beardsley's house in Washington?

636 A. The exact amount will have to be figured out. They do; they show $3,481.53.

Q. From what source came the money that made these payments?

A. From the Arkansas and Louisiana railway, as managed by J. D. Beardsley, lessee.

Q. What are the dates of the payments?

A. From April 24th, 1884, to May 21st, 1886.

Q. Do these books anywhere show that they are the books of J. D. Beardsley, lessee?

A. The nature of the account shows it.

Q. Is there a credit and debit to J. D. Beardsley entered on these books?

A. There is not.

Q. In what way do these books show that they are the books of J. D. Beardsley, lessee?

A. They credit the Arkansas and Louisiana Railway Company with the stock and bonds that were taken from them for construction.

Q. Please turn to your entry and give it as made on the books, and the date of it.

A. Stock account to Arkansas and Louisiana Railway Company. February 29th, 1884, assumed value of $200,000 stock taken on account of construction, $20,000. Bond account to Arkansas and Louisiana Railway Company. March 12, 1884, 240 bonds, $1,000 each, of the Arkansas and Louisiana railway—amount, $240,000; bonds taken on account of construction, assumed value 80c. $192,000. April 24th, 1884, stock account to Arkansas and Louisiana Railway Company, $120,000, issued on the road from Ozan to Washington; assumed value, $12,000. July 26th, 1884, land grant to the Arkansas and Louisiana Railway Company; value of land grant from actual sales, $6,683.30.

Q. What does that entry indicate?

A. The amount that was received for land that was donated.

Q. Donated by whom?

A. The State, I understand. That was before I was there.

Q. From what account did you ascertain the amount paid for J. D. Beardsley's house in Washington, and how is it headed?

A. It is headed J. D. Beardsley.

Q. Is there an account on your books headed cotton-seed account for the seasons 1884–'5 and 1885–'6?

A. There is such an account, and those are the seasons.

Q. I will ask you to state whether or not of the profits arising on account there was a division between J. D. Beardsley and Paul F. Beardsley for the years 1884–'5?

A. There was a division in the proportion of $\frac{1}{3}$ to $\frac{2}{3}$.

Q. What do your books show in regard to the cotton-seed transactions for the years 1885–'6—whether there was a division of profits or not?

A. There was no division of profits for the years 1885–'6.

Q. Who received the profits of the business for that season?

637 A. J. D. Beardsley.

Q. How much?

A. $915.92.

Q. On what date was the entry made on the books giving J. D. Beardsley credit for that sum?

A. It was paid on vouchers. One was dated March 30th, 1886, for $500, and the other was dated May 28th, 1886, for $415.92.

Q. Who drew those vouchers?

A. I did, as auditor.

Q. Upon whom?

A. Upon the treasurer, W. H. Carruth, and they were paid by him.

Q. Upon what fund were they drawn?

A. Upon the same fund that other vouchers were drawn.

Q. How came you to draw the vouchers for J. D. Beardsley for these two sums—I mean at whose instance?

A. At his instance; they were drawn on the general fund in the hands of the treasurer.

Q. I will ask you to turn to the account of Vinton Alderman on your books. What is the amount of credits given him, the date, and for what purposes, as shown by the original entry?

A. $12,000, for assumption of balance due him to date, January 1st, 1882.

Q. Do you know anything of the nature of that business?

A. It was for his interest in the road. I only know from what Major Beardsley told me. I mean the Arkansas and Louisiana railway.

—. From conversations with Major Beardsley in regard to the matter, was it for the entire balance due Vinton Alderman for his interest in the Washington and Hope railroad?

A. I inferred so.

Q. Now, what is the amount of his debits, and from what date do they extend?

A. From December 25th, 1882, to March 20th, 1886, aggregating $5,500; and this shows due him June 26th, 1886, $6,500.

Q. Are the debits on the book payments on the account?

A. Yes, sir; payments on the account.

Q. From what source were these payments made?

A. Most of it was paid from money taken in by the road as managed by J. D. Beardsley, lessee. Some of it was paid from money Major Beardsley borrowed from his wife; $200 was paid by Major Beardsley from the proceeds of a stave machine sold by Alderman; $800 was paid from money borrowed by Major Beardsley from his wife, which money was put into the general fund and vouchers for Alderman drawn against it. Had it not been for this money borrowed the condition of the road would not have permitted these payments to have been made.

Q. When Major Beardsley borrowed the money from his wife, which you have just mentioned as going into the general
638 fund of the road, was she not given credit on the books for this amount, and has she not been paid back out of the funds of the road?

A. She was, and she has been paid back out of the same funds the other payments were made.

Q. Was not J. D. Beardsley credited on the books with the proceeds of the stave machine sold by Alderman?

A. He was.

Q. Does it not result, then, that the payments made to Alderman were made out of the earnings of the railroad?

A. As managed by J. D. Beardsley, lessee, yes.

Q. What is the amount of the debits of J. D. Beardsley on the ledger, the total amount, and from what dates do they extend?

A. The entries are made from April 24th, 1884, to May 31st, 1886, aggregating $5,034.07.

Q. Do any of the debits there made include the amount paid to him as salary for his services?

A. They do not.

Q. What is the amount of his credits on the ledger account?

A. $5,587.53.

Q. In the $5,587.53 is the item $5,365.50 for material owned by J. D. Beardsley personally before the commencement of the Washington and Hope railroad, proceeds of which were used in the construction of the Arkansas and Lousiana railroad, included?

A. The item is included; $633 of that was for money received from the Baltimore and Ohio railroad; $4,732.50 was for material in the Washington and Hope railroad.

Q. I will ask you if there is an account on the books kept by you of the construction of the telephone line.

A. There is. We have no company. We call it the telephone line.

Q. How much does it show to have been paid for the construction of the telephone line from Hope to Nashville?

A. $927.22.

Q. From what sources came the money that paid for that?

A. From the same source as the other money mentioned—from the earnings of the road as managed by J. D. Beardsley, lessee.

Q. I will ask you from what source came the money that paid for the construction and furnishing of the Nashville hotel.

A. From the same source as the money for building the telephone line.

From lack of time to complete the same the taking of this deposition is adjourned until Saturday morning, June 26th, 1886.

SATURDAY, *June 26th*, 1886.

The taking of this deposition is renewed.

Present: The plaintiff, by Mess. Jones & Martin, and the defendants, by Mess. —. M. Moore, A. B. Williams, and J. D. Conway.

639 Examined by T. B. MARTIN, Esq.:

Q. Will your book show the purchase of fire-brick; and, if so, what is the aggregate amount paid for them?

A. They do. One lot, $36, bought by and charged to J. D. Beardsley; another lot, $11, bought by and charged to Major Beardsley. One lot was for 500 at $11 and the other was for 2,000 at $36; another lot of 2,000 at $44 was charged to construction account for building the Nashville hotel. That is all.

Q. Out of what funds were these bricks paid for?

A. Out of the funds of the lessee.

Q. Out of the earnings of the road?

A. Out of that and other funds that belonged to the lessee and the same funds that other sums were paid out of.

Q. From what source did the lessee receive the funds to pay these debts?

A. From the earnings of the road, the sales of land—that is about all—and some sales of old material. That is about all the sources I can think of.

Q. You testified yesterday that $800 had been paid, as shown by the books kept by you, to Cap. Bell for the purchase of land about 1½ miles from Nashville, in Hempstead county. Upon examination of the books kept by W. H. Carruth, as treasurer, what amount do you find to have been paid to him for that purpose?

A. On Oct. 6th, 1882, I find $400. On Dec. 27th, 1882, I find $825, which appears on Mr. Carruth's account as paid for this purpose.

Q. Does the entry of $825, mentioned in your last answer, include the amount of $800, testified to by you yesterday, or is it an additional sum?

A. It is an additional sum.

Q. Is it not true that the money for the construction of the Nashville hotel, the money for the purpose of buying land furnished to Cap. Bell, the money furnished to build the residence of J. D. Beardsley, in Washington, the money furnished to pay for the construction of the telephone line from Hope to Nashville, all came from the earnings of the Arkansas and Louisiana railway?

A. It came from the earnings of the Arkansas and Louisiana railway as managed by J. D. Beardsley, lessee. I will add to that answer, from other funds of the lessee, as well as sales of lands, etc.

Q. What lands?

A. Property at Nashville and possibly some of the money from the land grant, and possibly some more lands that Major Beardsley bought. He owned some land. I do not know anything about that.

Q. What are the earnings of the Arkansas and Louisiana railway, as shown by your books?

A. Earnings shown by my books are as follows:

640

1883.	Gross.	Estimated expenses.	Net.
Oct.	2,467 83	1,400	167 83
Nov.	3,291 67	1,380 49	1,911 18
Dec.	3,559 11	1,422 75	2,136 36
	9,318 61	4,203 24	5,115 37

Road completed about 2 miles beyond Ozan.

		Actual expenses.	
1884.	38,402 10	13,588 58	24,813 52
1885.	53,573 44	19,143 56	34,429 88

Road completed to Nashville Oct. 4, 1884.

Cross-examination by J. M. MOORE, Esq.:

Q. When were you employed in the capacity that you have been working at in connection with the Arkansas and Louisiana railway?

A. In January, 1884.

Q. Who employed you?

—. J. D. Beardsley.

Q. In what capacity did he employ you?

A. I understood that he was the manager of the Arkansas and Louisiana railroad as lessee and manager.

Q. Under the construction contract?

A. Yes, sir; he so informed me when I opened the books.

Q. Who was then operating the Arkansas and Louisiana railway and has been operating it since that time?

A. J. D. Beardsley.

Q. Do I understand that the railroad was operated by J. D. Beardsley as lessee, and not by the Arkansas and Louisiana Railway Company?

A. That was my understanding.

Q. You have spoken in your examination-in-chief of the account of the railway. Do you intend by that to refer to the account of the railway company or to the account of J. D. Beardsley, as lessee, in connection with the construction and operation of the railroad?

A. To the account of J. D. Beardsley, lessee.

Q. You spoke yesterday in your examination-in-chief of the books being labelled as the books of the Arkansas and Louisiana Railway Company. Are those books marked Arkansas and Louisiana Railway Company or Arkansas and Louisiana railway?

A. My recollection is that they were labelled Arkansas and Louisiana railway. I cannot be positive, as I have not the books with me.

Q. State what your social relations have been with Paul F. Beardsley since your connection with the road.

A. They have been exceedingly friendly. I do not know that I can say more than that.

Q. What position has he held in connection with the road in that time?

641 A. At first he had the title of assistant superintendent; afterwards it was changed to master of transportation

Q. Are you acquainted with the duties that have been performed by him during the time he was connected with the road?

A. I think so.

Q. State the nature and extent of his duties.

A. Mr. Beardsley's duties always seemed to me to be of quite a general nature. He superintended the track, shops, taking up wood on the road; attended to almost any interest that might come up that needed attention, and in Major Beardsley's absence represented him on the road.

Q. Did his position seem to be coequal or subordinate to Major Beardsley?

A. I always thought it subordinate to Maj. Beardsley.

Q. During the time of your connection with the road what has been your understanding from the course of conduct of Paul F. Beardsley in connection with the road as to his relation to the property? Also state on what you base your answer.

(Objected to by plaintiff as incompetent.)

A. I understood him to be an employee of the road. I never knew of any interest Paul Beardsley had. When I was first connected with the road, from the fact that he was Major Beardsley's brother, I may have speculated upon his having some interest in the road, but, not being able to see how such interest could exist without my knowledge, I was forced to the conclusion that he was only an employee. This conclusion was strengthened as my connection with the road became more intimate. I noticed that during Major Beardsley's absence matters of importance were laid over generally until his return. This was specially the case in making special rates. I noticed this more than anything else that came to my knowledge. When Major Beardsley was at home he managed things entirely, as far as I was able to see.

Q. Were your relations during that time with Major Beardsley intimate?

A. They were very intimate and confidential. They were necessarily so from my position.

Q. Did he talk freely to you in regard to his interest in the road and the business generally?

A. Very freely, indeed.

Q. Did you ever during that time hear any expression from him indicating that Paul F. Beardsley sustained any other relation to the road than that of an employee?

A. I did not.

Q. What did the action and conduct of Major Beardsley during that time indicate the relation of Paul Beardsley to be?

(Objected to as incompetent.)

A. That of an employee.

Q. Referring to the entire course of conduct with Major Beardsley and Paul Beardsley, both in relation to the road and the
642 management during the time of your connection with the road, was that conduct consistent or inconsistent with the proposition that they were joint owners of the road?

(Objected to by plaintiff as incompetent.)

A. I would say it was inconsistent.

Q. Do the books kept by you show all the earnings derived from the road?

A. They do, since I took charge.

Q. Do they show all the disbursements that have been made and on what account?

A. They do.

Q. You spoke in your examination-in-chief yesterday, on several occasions, of the application of the funds derived from the road by

J. D. Beardsley. Do you mean in that connection of funds derived from the operation of the road by him as lessee?

A. I do.

Q. Did the funds received by Major Beardsley from sources outside of the road go into the books kept by you, and were these funds applied in the same manner as other funds derived from the operation of the road?

A. They did; the funds from other sources than the earnings of the road went into my books and were applied in the same way as funds earned by the road, and were applied and disbursed in the same manner as funds derived from the operation of the road.

Q. Did Paul Beardsley know of the manner of keeping the books during this time?

A. I think he did. He often examined them, looked over them, and looked over the statements that were made. On one occasion, in looking over a balance-sheet that was headed "balance-sheet of J. D. Beardsley, builder and lessee," he called my attention to a credit of Major Beardsley of about $5,300 for material, and suggested that it was singular that Major Beardsley should take a credit on his own books, or something to that effect. My recollection is that this was in the summer of 1884. My recollection is that it was before the road got to Nashville. I cannot say positively, but, to the best of my recollection, it was in the summer of 1884.

Q. Did Paul Beardsley ever make any objections to the manner of keeping these accounts and these disbursements?

A. I have no recollection that he ever did.

Q. I wish you would state the amount your books show was received from the collection of the donation notes—that is, notes executed by the citizens of Washington to Major Beardsley under his original contract for the construction of the Washington and Hope railroad, and what disposition was made of the proceeds of these notes.

A. My books show the collection of donation notes of $645 principal and $143.38 interest. This money went into the general fund. It was applied in the same way that other funds derived from the operation of the road *was* applied.

643 Q. Turn to the books of Carruth as treasurer and see how much is shown on them as collected on the donation notes, and state what disposition was made of the proceeds.

A. I find on the books of Carruth between the dates of Dec. 4th, 1880, and May 17th, 1883, certain notes which I take to be the donation notes referred to, amounting to $6,186.75, and the money received from these notes was paid to the St. Louis Bolt and Iron Company. Other notes may have been paid and entered by Carruth showing so much money coming from the parties paying without specifying that it was for these notes. Of this I am not advised.

Q. On what account were these payments made to the St. Louis Bolt and Iron Company?

A. My understanding is that it was for iron bought by the Washington and Hope Railway Company.

Q. Does the amount which you state as having found on the books of Carruth include the amount first stated by you as taken from your own books?

A. No; it is additional.

Q. Turn to the account and state what amount has been paid to the St. Louis Bolt and Iron Company and on what account it was paid since September 1st, 1882, at which date the Washington and Hope Railway Company was sold to the Arkansas and Louisiana Railway Company.

A. My books show payment of $9,277.03. From the best information I gather from the entries on Carruth's books $5,613.60 was paid by him.

Q. On what accounts were these payments made and what amount, if any, was paid on account of the Washington and Hope railway?

A. I am informed that the payments were made for iron purchased for the Washington and Hope railway.

Q. Do you know from the account rendered by the St. Louis Bolt and Iron Company that the payments were made on the account stated in your last answer?

A. I cannot state positively without having the account. My recollection as to how the account was rendered is not distinct.

Q. Do you remember what that account was rendered for—whether for iron or rails?

A. I do not.

Q. Can you state all the amount stated by you as having been paid to the St. Louis Bolt and Iron Company since September 1st, 1882?

A. In the aggregate, $14,890.43 was paid. The money that has been paid since my books were opened was paid by J. D. Beardsley from the funds of the Arkansas and Louisiana railway as operated by him as lessee.

Q. Now state what amount has been paid since your books were opened?

A. $2,372.80 has been paid in cash; $6,904.63 has been paid in notes taken for material sold. I think all have been paid by the parties giving the notes except some $1,500, which the parties
644 failed to pay and we had to pay ourselves. So far as I know, these notes were given by the parties giving them except about $1,500, which the parties defaulted on, and Major Beardsley, as endorser, had the notes to pay. It was paid out of the funds of J. D. Beardsley, lessee, the earnings of the road as managed by J. D. Beardsley, lessee.

Q. By whom was this $1,500 note not paid given?

A. By the Lampasas Street Railway Company or their representatives. I do not know how the note was signed.

Q. Has this note ever been paid by the maker?

A. No, sir.

Q. You stated in your examination-in-chief that a certain amount was received from the Lampasas Street Railway Company and the St. Louis Wooden Gutter Company for old material sold. Do you

know how much of this went to the payment of the Washington and Hope railway debts?

A. No, sir; I do not.

Q. Do you know how much of the receipts referred to in my last question was paid to the St. Louis Bolt and Iron Company for material?

A. I find that a draft of the Oak Land and Lumber Company for two cars of rails, plates, &c., amounting to $1,113.91, was sent to the Bolt and Iron Company. This was to be credited, however, on account of material purchased for the extension of the road to Nashville. That is all the information I can find in regard to the credit.

Q. Have you any knowledge of this transaction other than what you derive from the entries on the books?

A. I have not.

Q. Have you any knowledge in regard to the entries of $5,365.50 credited to J. D. Beardsley, which you referred to in your examination-in-chief, than what is based on the entries as they appear in the books in the account?

A. I have no personal knowledge of these entries, except that Major Beardsley has told me that the prices that appear for the material were very much less than they were at the time they went into the road. My recollection is that Major Beardsley so advised me at the time the original entries were made, but I cannot be certain.

Q. What is the aggregate amount shown by the books to have been received and applied to the construction and improvement of the road from the donation notes made to Major Beardsley?

A. From my books and the best information I can get from Carruth's books I find the aggregate of the donation notes collected to be $6,975.13; this includes interest. These payments went to the St. Louis Bolt and Iron Company—that is, about $61.00 of them.

Q. Have the collections of the donation notes since your connection with the road gone into the general account which you describe as the account of the Arkansas and Louisiana railway as operated by the lessee?

A. To the best of my recollection they have.

Q. And have the proceeds of old material gone into the same fund?

645 A. All collections that have been made since my connection with the road, to the best of my recollection, have gone into that fund.

Q. You stated in your examination-in-chief that the books show payments of $5,500 on indebtedness to Alderman for his stock in the Washington and Hope railway. I wish you would state how these payments were made and if any part you include in the $5,500 remains unpaid at this time.

A. There is an acceptance or note for $500 which will be due July 26th, 1886.

Q. Whose acceptance is that to which you refer now?

A. J. D. Beardsley's.

Q. Was not $1,200 of this amount paid before you took charge of the books?

A. $1,250 was so paid.

Q. You stated yesterday in your examination-in-chief that most of the payments made to Alderman were made from the earnings of the road. Do you mean to say from the money earned directly by the operation of the road or the general fund which includes money derived from the operation of the road and other sources?

A. From the general fund derived from the operation of the road and other sources, being the same fund referred to in other cases.

Q. You also stated in your examination-in-chief that the money with which the *money* was built—the money applied to the building of the residence of J. D. Beardsley and the construction of the telephone line—was derived from the earnings of the railroad. Do you mean that these moneys were derived from running the road or from the general fund derived from running the road and other sources?

A. From the general fund as derived from all sources.

Q. Has there ever been at any time since your connection with the road any money or fund belonging to the Arkansas and Louisiana Railroad Company as distinguished from the funds of J. D. Beardsley, lessee?

A. There has not to the best of my recollection.

Q. All times, then, when you speak of the money or funds of the railway they were the moneys of J. D. Beardsley, lessee?

A. Yes, sir.

Q. Referring to the payments to John Bell for land in Hempstead county, please state whether any of this indebtedness paid was evidenced by notes; and, if so, whose notes they were.

A. Part of it was evidenced by the note of J. D. Beardsley. Part of the payment was in cash, and part of the notes of Major Beardsley at thirty and sixty days.

Q. Have all the amounts that have been paid on the residence of J. D. Beardsley been charged to him on his personal account?

A. To the best of my knowledge they have.

Q. Did you, during the progress of the transactions in regard to the purchase of cotton seed for the Little Rock Oil Company, have any knowledge of this business?

A. I think I did; I managed the business.

646 Q. During what years was the cotton seed purchased for the Little Rock Oil Company?

A. During the seasons 1884–'5 and 1885–'6.

Q. By what person was this cotton seed purchased?

A. The first year the cotton seed at Washington was purchased by Ed. Alexander; at Ozan, by Mitchell & Goodwin.

Q. Were these men connected with the Washington and Hope railway or with J. D. Beardsley, lessee?

A. They were not.

Q. How were they paid for their services in connection with the cotton seed?

A. There was a division of the profits on the seed they bought.

Q. Did any employee of the lessee during either season render any service in connection with this cotton seed?

A. The first season a very small amount at Nashville was bought by the agent there. The next season a little more. At Ozan, both years, the cotton-seed business was conducted by Mitchell & Goodwin on the basis just mentioned. The first season the business in Washington was conducted by Alexander, as previously mentioned. The second season it was conducted by a young man that I employed to attend to the cotton-seed business, with the understanding that when he was not engaged in the cotton-seed business he would assist in railroad work. He was paid on the regular pay-rolls of the company, his salary being divided between the cotton-seed and railway accounts, my recollection being that it was divided half and half.

Q. Did you make a settlement with the agent of the oil company of this business; and, if so, did you make the settlement on behalf of J. D. Beardsley, lessee, or personally?

A. My understanding was that it was personal. The settlements were made at the end of each season.

Q. You were asked yesterday on your examination-in-chief in regard to the division of the profits of that business between J. D. and Paul Beardsley. Please state fully all the circumstances connected with that division and how it came to be made, as far as you know.

A. My recollection in regard to the matter is that at the end of the first year I reported to Major Beardsley the amount of the profits on the cotton seed. He asked me if in my opinion it should go into the railroad fund or to him personally. After thinking the matter over I told him I thought there was no reason why it should go into the railroad business. Then he instructed me to have the amount placed to his credit at Mr. Carruth's. A few minutes afterwards he told me to have two-thirds of the amount placed to his credit and one-third to the credit of Paul Beardsley; also stating that as we were pressed for funds at that time to let the entries stand over for the present. In consequence the matter was left over for, I think, some months. Then the entries were made as he suggested. Either at that time or a day or two afterwards Major Beardsley remarked to me that it would be a pleasant surprise to Paul Beardsley.

Q. Did you understand from the conversation with Major
647 Beardsley and his instructions that this one-third of the profits was given to Paul Beardsley as a matter of right because he had an interest in it or as a mere gratuity?

(Objected to by plaintiff as incompetent.)

A. From his conversation in regard to its being a pleasant surprise to Paul Beardsley I would have inferred that it was a gratuity. It made the impression on my mind that it was just a gift. No question of right in the matter was ever mentioned in my conversation with Major Beardsley.

Q. Who furnished the money to buy the cotton seed?

A. J. D. Beardsley.

Q. From whom did he obtain it?

A. He obtained it from the Little Rock Oil Company.

Q. I understand, then, that no funds of J. D. Beardsley, lessee, were used in the purchase of cotton seed?

A. For a short time prior to January 1st, 1886, some money was advanced from the funds of the lessee for the purchase of cotton seed upon an understanding with the Little Rock Oil Company made by Major Beardsley that about January 1st, 1886, they would advance us a sum about sufficient to pay for the cotton seed the balance of the season. To the best of my knowledge this is the only time when the funds of the lessee were used for the purpose of buying cotton seed. The money paid out from time to time under this arrangement and the sales entered and from the account the amount on the first of January aggregated about $1,800. This was returned on January 1st—that is, on January 1st they gave a draft for $6,000 to J. D. Beardsley. This money, the $1,800 advanced for cotton seed, came from the funds of the lessee and came from the funds of the road as managed by J. D. Beardsley, lessee. It was refunded out of the $6,000 sent to Major Beardsley.

Q. Do you know why Major Beardsley asked the question as to how the profits of the cotton seed should be applied?

A. No reason was assigned at that time. He just asked me the question.

Q. Please refresh your memory so as to state if you did not understand at that time from conversations had with Major Beardsley that the inquiry was based on the fact that the St. Louis, Iron Mountain and Southern Railway Company had an interest in the construction contract, and that it was that the interests of said company might not be injuriously affected?

A. Major Beardsley had previously informed me that such an interest existed, and I considered that it was on that account that he asked me in regard to the disposition of the cotton-seed money.

(Objected to by plaintiff as incompetent.)

Q. Did you know J. D. Beardsley on other occasions to make donations or gifts of money to Paul F. Beardsley?

A. I remember only one now. On the account rendered by Carruth on February 1st, 1885, I noticed a charge of $187.76 as paid Paul Beardsley. I called Major Beardsley's attention to the
648 matter and asked him in regard to it. He advised me that it was all right; that it was the amount of an overdraft on Paul Beardsley's account on Carruth's books, and that he had requested Carruth to charge it to the railroad, and I think told me at the time that he intended the amount as a Christmas present to Paul Beardsley.

Q. Did you at any time during your connection with the road ever hear him make any complaint or objection to the amount of his salary?

A. I cannot recollect anything of that kind.

Q. Has there not during your connection with the road been

large amounts of money derived by borrowing and outside sources and used in the operation and construction of the road?

A. There has.

Q. By whom and upon whose credit has this money been obtained?

A. It was obtained on the notes of J. D. Beardsley.

Q. Did the personal credit of Paul F. Beardsley ever contribute to the fund?

A. At one time he borrowed $400 from Paul Beardsley. This is the only instance I recollect in which he contributed money to the road. Major Beardsley's notes were indorsed by Baird & Carruth.

Q. Did J. D. Beardsley, during your connection with the road, have the sole and entire management of the road and corporation, or was the management divided with Paul Beardsley?

A. It seemed to me that Maj. Beardsley had the exclusive management of the road at all times.

Q. With whom, if with any one, did he principally consult with regard to the management of the road?

A. To the best of my recollection, Mr. Carruth was Maj. Beardsley's principal financial adviser, and he consulted with me and with Paul Beardsley. I cannot say that he consulted with Paul Beardsley about the finances.

Q. Were J. D. Beardsley and Paul Beardsley in your office a good deal during the time of your connection with the road?

A. When I first began with the road there was only one office. During the greater portion of the time J. D. Beardsley's office and mine were the same. Paul Beardsley was out on the road a great part of the time, but when in Washington he was in the same office.

Q. Were your relations with J. D. Beardsley close and confidential?

A. They were.

Q. Did he consult with you and talk freely with you in regard to his connection with and interest in the road?

A. He did. He told me in detail all the various stages through which the road had passed and of his interest that existed in it—at least I understood it as to all his interest. He talked very freely of the interest of the Iron Mountain Company in the road and how that interest came about, and, in fact, talked to me very
649 freely of all matters that came up. My understanding, in fact, that there was nothing in connection with the road that I was not familiar with through my connection with it.

Q. Do I understand you to say in answer to my former question that the result of your intercourse with him as well as with Paul Beardsley left the impression on your mind that Paul Beardsley had no interest in the road?

(Objected to by plaintiffs as incompetent.)

A. Yes, sir.

Q. If Paul Beardsley had owned an interest in the road would it

have been consistent with the relations that existed between you and J. D. Beardsley, and with the fact that he was in the habit of communicating with you in regard to his interest in the road, for J. D. Beardsley to have withheld from you the knowledge of Paul Beardsley's interest?

(Objected to by plaintiff as incompetent.)

A. It would have been inconsistent, in view of our confidential relations, for him to have withheld the information.

Re-examination by T. B. MARTIN, Esq.:

Q. In your cross-examination you say that the conduct of Paul F. and John D. Beardsley was inconsistent with the idea that they could have been joint owners of the road. Please state what that inconsistent conduct was.

A. I noticed that when Major Beardsley was at home he seemed to have entire control of the road; that Paul Beardsley was subject to his orders just the same as others connected with the railroad. In Major Beardsley's absence matters would frequently come up for attention that belonged to the ordinary business of the road, and they were deferred until he came home. In some cases matters relating to special rates came up and were deferred until he came back. On one occasion a scraper was sold and Major Beardsley canceled the sale, and the scraper was returned, much to the annoyance of the party buying it. These things caused me to come to that belief.

Q. In your cross-examination you say that the funds received by Major Beardsley from sources other than the earnings of the road, sale of material, lands, &c., were applied in the same manner as money arising from those sources. Please state the amounts and dates of the moneys thus received by Major Beardsley.

A. If I stated that there were such funds I referred to the money received from the Baltimore and Ohio railroad, which is $633 and which was received prior to my taking charge of the books, but was reported to me and entered upon the date of January 1st, 1884, and to the proceeds of a stave machine sold by Alderman for Major Beardsley, amounting to $200. If there are other funds I cannot particularize them.

Q. Do you know whether there were other funds or not?

A. I cannot remember them.

Q. Do you know whether there were other funds or not?

650 A. I do not know whether there were or not.

Q. Do your books show any other?

A. I do not call them to mind now. They might show on a close examination.

Q. Was Major Beardsley given credit on the books on his personal account for these two items?

A. He was.

Q. You say that Paul Beardsley frequently examined the books and was familiar with the manner in which they were kept. About how often did he examine those books prior to January, 1886?

A. It is impossible for me to say. The books were always open to his inspection, and several times he examined them prior to January, 1886.

Q. How many times did you ever know of his examining them?

A. I cannot remember how many times.

Q. You testified on cross-examination that J. D. Beardsley gave his notes, endorsed by Baird & Carruth, and upon these notes money was raised for operating the road. Were not these notes paid out of the earnings of the road, sale of old materials, lands, &c.?

A. They were.

Q. From what source came the money that paid for the cotton seed bought for the Little Rock Oil Company?

A. From J. D. Beardsley, and was sent to him by the Little Rock Oil Co.

Q. Did you not testify before noon that about $1,800 was furnished from the earnings of the road, sales of land and materials?

A. My recollection is that I testified that that much was advanced for the purchase of cotton seed, and that it was afterwards paid back by the Little Rock Oil Company.

Q. From what source came the $1,800?

A. From the funds frequently referred to—the earnings of the road, sales of land, materials, &c.

Q. What was done with the $6,000 paid by the Little Rock Oil Company on January 1st, 1886?

A. It was paid to the St. Louis, Iron Mountain and Southern Railway Company on indebtedness due them.

Q. Was it carried on the books of the company kept by you?

A. Yes, sir.

Q. In cross-examination you say that Major Beardsley and you were on intimate relations, and that you derived your knowledge of the interests in the road from conversations with him. Is it true that Major Beardsley told you on account of the confidence he reposed in you and the intimate business relations existing between you in nearly everything connected with the road and his transactions?

A. I think so.

Q. Did he ever tell you how much he paid for the iron narrow-gauge engine and cars bought in Shelby county, Tennessee?

A. He did not.

Q. Did he ever tell you anything about his execution and
651 delivery to Paul Beardsley of the memoranda of stock sold to him about January 1st, 1882?

A. He did, some time in February, 1886.

Q. Did he ever tell you about it before the institution of this suit?

A. A few days before.

Q. Did he tell you anything about it before the correspondence between him and Paul Beardsley that preceded the institution of this suit?

A. He did not.

Cross-examination by J. M. MOORE:

Q. What was it that Major Beardsley told you in regard to the contract referred to a moment ago in your examination-in-chief?

Objected to by plaintiff as incompetent.

A. He only told me that he gave Paul Beardsley such a memoranda.

Q. For the purpose of refreshing your memory I will ask you whether Major Beardsley stated to you, at the time that he told you of the memoranda having been given to Paul Beardsley, that he thought that Paul Beardsley had abandoned it long ago.

Objected to by plaintiff as incompetent.

A. My recollection is that he did, and also something about Paul Beardsley having a mine in California that he expected to sell.

Q. Referring to the sums received from outside sources, were not the donation notes heretofore referred to of that character, and were not part of these collected since your connection with the road?

A. I suppose they would be considered of that character, and I think 600 and odd dollars and interest have been collected since I became connected with the road.

Q. Do not the books of account kept by you and Carruth show that nearly $7,000 have been received from that source alone?

A. They do. My recollection is that this morning I testified to 6,900 and odd dollars being so received.

Q. You referred awhile ago to the examination of the books by Paul Beardsley. Do you mean by that that he examined the books as one having an interest in them would examine them, or that he merely looked over them in a casual way?

A. I cannot say. I remember that on one occasion he came into the office. I had two desks, and sometimes I would see him looking over the books, but what kind of an examination he was making of the books I cannot say.

Q. Did he at any time catechise you in regard to the books, and did his manner indicate special interest or anything more than a mere casual examination for curiosity?

A. I cannot remember that the manner of keeping the books was ever mentioned between us, and his examination of the books seemed to me to be casual.

652 Q. I believe that you have heretofore stated that he never at any time questioned the manner of keeping the books and conducting the business.

A. I do not remember that he ever did.

Q. Please look at the paper handed to you and state whether it is the letter-head used by the lessee to which you referred in your examination-in-chief.

A. Yes, sir; that is the letter-head to which I referred. I make it Exhibit "A."

Q. You stated in your cross-examination that the books were open for the inspection of Paul Beardsley. Do you mean by that that you had instructions from Major Beardsley to let Paul

Beardsley inspect the books, or that it was merely a matter of courtesy?

A. The books were either lying on my desk or were in the open safe, and Paul Beardsley looked over them without the matter ever being referred to.

Re-examination by T. B. MARTIN, Esq.:

Q. Was the letter-head made Exhibit A to your deposition the same form used prior to January 1st, 1886?

A. It was used for a time prior to 1886. My recollection is that we began using it in the early fall of 1885.

Q. Did you not testify in your cross-examination that the bonus notes were delivered to the St. Louis Bolt and Iron Company on an account due them?

A. I do not think I did.

Q. Is it not true that they were?

A. That was before my time. I cannot testify of my own knowledge. That was before I took charge of the books.

Q. Were not the bonus notes referred to made payable to the Washington and Hope Railway Company?

A. I cannot say; I do not remember.

Copies of the statement of account for material and money furnished by the St. Louis, Iron Mountain and Southern railway for the construction of the Arkansas and Louisiana railway, as rendered by the St. Louis, Iron Mountain and Southern railway, are hereto attached, marked Exhibit "10," and made a part of this deposition.

H. H. WHELESS.

653 W. H. CARRUTH, being duly sworn and introduced by the defendant, deposes and says:

Examined by J. M. MOORE, Esq.:

About the time the Washington and Hope railway was received John D. Beardsley became the superintendent of it. I am not positive, but it was about the 1st of January, 1881. It was commenced in the fall or summer of 1879. He was appointed in the
654 early part of 1881, and his salary was $2,000 per annum. All his salary was not paid; I think more than half of it was never paid. Paul Beardsley was assistant superintendent, and was appointed directly after he came there. He was under a salary of $75 per month. That was changed, I think, December 1st, 1883, when it was increased to $100 per month. The rails and ties of the Washington and Hope railroad were most of them in bad condition in 1882. It was so in the beginning of the year and they got worse as they were worn. It frequently took all day or more to make one trip of ten miles and back. The Washington and Hope Railroad Company, for an institution of its size and property, was considerably in debt. It was incumbered. It was not able to pay its debts and hold its property. The Washington and Hope railroad was not

self-supporting. The superintendent's salary was not paid for want of funds. There was not sufficient earnings to make the necessary repairs on the road. I remember a very bad washout in May, 1882; the company did not have the means to repair it. Major Beardsley came to me several times and wanted my firm to advance the money. It would take $1,500, and I did not feel safe to advance that money. I afterwards did lend him a smaller sum, I think $400. He fixed it up so that he could run with that. The earnings of the Washington and Hope railway did not contribute to the extension of the road from Washington to Nashville.

Q. You stated in your previous examination in this case that at the time the construction account was opened in the name of the Arkansas and Louisiana Railway Company there was no liquidation or administration of the old business. Please state if there was at that time anything in the treasury belonging to the old railway.

A. No, sir; they were overdrawn; there were no funds there.

Cross-examined by T. B. MARTIN, Esq.:

Q. You say in your direct examination that J. D. Beardsley in 1881 was elected superintendent of the Washington and Hope railway and his salary fixed at $2,000. By whom was that salary fixed?

A. By the directors.

Q. You say that not more than half the salary of the superintendent was paid. Do you mean his salary as superintendent of the Washington and Hope railway alone?

A. It ran from the time he was appointed superintendent up until the time I was instructed to pay him $200 per month salary—until December 1st, 1883—from January, 1881, to December, 1883. I do not remember the date the Washington and Hope Railway Company went into the extended company—the Arkansas and Louisiana Railway Company. That $2,000 salary may have lapped over on to that time. The $2,000 salary went on from the time he was first elected superintendent until December 1st, 1883.

Q. What is the date of the construction contract?

A. I am not positive without the record, but I think in May, 1883. On looking at the record it was May 22nd, 1883.

655 Q. Did J. D. Beardsley's salary as superintendent, as fixed by the board of directors at $2,000, continue after the execution and delivery of the construction contract?

A. Yes, sir.

Q. The records of the board of directors will show the fixing of the salary and the election of the officers?

A. I think so if they are correctly kept.

Q. Will they also show the fixing of the salary of Paul F. Beardsley as assistant superintendent?

A. I do not think it does. I think Paul Beardsley was appointed as assistant superintendent by J. D. Beardsley, superintendent.

Q. Who fixed the salary of Paul F. Beardsley?

A. I do not know whether it was done in the directory or by J. D. Beardsley as superintendent; I think by J. D. Beardsley.

Q. You say that in 1882 the Washington and Hope railway was encumbered. Do you know to what extent?

A. It had one main debt and considerable smaller floating debts. My general idea would be from $15,000 to $18,000.

Q. Have you no books that would show?

A. No, sir; I kept the treasurer's books, but no books that would show the amount of the incumbrance.

Q. Will your books show the salary account of J. D. Beardsley?

A. You mean the $2,000 salary?

Mr. MARTIN: Yes, sir.

A. I presume the secretary's record book would show it.

Q. Did you as treasurer keep the account of moneys paid to J. D. Beardsley while acting as superintendent under the $2,000 salary you have mentioned?

A. I charged him with the moneys when he got them. I do not know that I could show from the account what the sums of money were for. I was in the habit of handing him money for various purposes and on account.

Q. Then how did you arrive at the conclusion that he was paid only half his salary?

A. He frequently talked to me about it and wanted it. He kept me constantly in remembrance of the amount due him.

Q. Is it not a fact that J. D. Beardsley frequently drew money from the agents at the depots that was not entered on your books?

A. I do not know that. If he ever drew any I do not know of it. I do know this, that he sometimes drew money from the agents and reported the amount to me to be charged and credited. I do not know whether he drew any he did not report or not.

Q. You say the Washington and Hope railway was not self-supporting. At what time did the railway which succeeded to the rights of the Washington and Hope railway become self-supporting?

A. Just the time cannot be stated, but it became so and more than self-supporting after the road reached Nashville.

Q. Have you ever examined the earnings book of the Washington and Hope railway and the earnings book of its successor?

A. I have frequently looked at them.

656 Q. Do you remember the net earnings for the years beginning with 1883?

A. No, sir; I have not. There may have been money belonging to the road that was properly appropriated that did not come through my hands. If so, it was contrary to instructions, for all agents were ordered to send money to my hands.

Q. Do you know of any money that was expended that did not come through your hands?

A. I do not remember any case.

Q. Is it not true that prior to the adoption by the company and you of keeping accounts by a system of vouchers that moneys were frequently paid out without coming into your hands and of which you kept no account?

A. I do not know. It might possibly have been so.

Q. You say in your examination-in-chief that the earnings of the Washington and Hope railway did not contribute to extending the railroad to Nashville. Was not the Washington and Hope railway being run or its successor using the same line, cars, engines, &c., during the period of construction from Washington to Nashville of the Arkansas and Louisiana railway?

A. The same identical moneys from their earnings may have been paid on construction debts, but more money was paid out of the construction funds on the old Washington and Hope railway debts than on the other. Upon the whole, the construction fund helped the old railroad largely more than its earnings did the construction.

Q. Upon what security was the construction fund you have just mentioned obtained and from what source?

A. There was a written agreement on that. I am not clear on that. I only know from hearsay. It was secured. I stated in my other deposition that I knew from hearsay that it all came from the Iron Mountain railroad and was secured by mortgage bonds or mortgage lien—I do not know which—on the railroad. I do not know whether it was on the entire road. The agreement may specify a part of it.

Q. Did you ever hear J. D. Beardsley talk about it?

A. He talked to me frequently about it. That was the idea I got from him about it—that it was a lien on the road and its bonds.

Q. Did J. D. Beardsley ever tell you that he deposited the bonds and stock of the Washington and Hope Railway Company as security for the money to extend the road from Washington to Nashville?

A. I do not remember that he did, but in a conversation with him there was something said about depositing railroad bonds or stock the collateral security, but just what road or stock I do not now remember.

Q. What road were you talking about at the time?

A. We were talking about the railroad. I do not remember at these former talks how much road there was. If before the change of name, it was the Washington and Hope railroad; if after the change, it was the railroad as it existed at the time we talked.

657 Q. Did J. D. Beardsley obtain the money to extend the line from Washington to Nashville on his individual responsibility, or was the credit based on the railroad and his interests therein?

A. Major Beardsley told me about that time that Mr. Hays refused to contract with the directory and said he knew nothing of them; that his contract was with J. D. Beardsley. Whether or not Mr. Hays would have let him have the money without the railroad to back him I do not know.

Q. Do you know whether he did let him have it or not?

A. Only from hearsay; from Major Beardsley talking to me about the time the transaction was being had.

Q. Do you know from conversations with J. D. Beardsley that he

let him have it on the strength of the railroad, or on Beardsley's individual responsibility based on the property outside of the railroad?

A. Major Beardsley mentioned to me something about collaterals to secure the borrowed money he was to get from the Iron Mountain road. He was to put up these collaterals, the railroad bonds and stock; they were the bonds and stock of this railroad. I do not know whether it was to be the bonds and stock of the Washington and Hope railway or of the new railroad when built.

Q. At what time was the conversation mentioned in your last answer?

A. Some time in summer or fall of 1882.

Q. Were you not the president of the Washington and Hope Railway Company.

A. Yes, sir.

Q. Also of the Arkansas and Louisiana Railway Company?

A. Yes, sir.

Q. Do you know all the directors of those two companies and the amount of stock each owned in either company?

A. No, sir: I cannot answer from recollection.

Q. Do you not know that their stock interest was merely nominal?

A. It was.

Q. Same with your own, was it not?

A. Yes, sir.

Re-examination—examined by J. M. MOORE:

J. D. Beardsley began to get money from the Iron Mountain Company in August, 1882, I think. That was money that was used in constructing the railroad from Washington to Nashville. I do not remember whether the bonds of the Arkansas and Louisiana Railway Company had been issued then or not.

W. H. CARRUTH.

658 R. B. WILLIAMS, being duly sworn, deposes and says: My name is R. B. Williams; am a lawyer by profession; reside in Washington, Ark., and am thirty-four years old; am secretary of the Arkansas and Louisiana Railway Company, and was secretary of the Washington and Hope railway and also of the Arkansas and Indian Territory Railway Company, and as such secretary kept a record of the proceedings of the board of directors.

There were one hundred thousand dollars of paid-up capital stock issued in the Washington and Hope Railway Company in shares of twenty-five dollars each; one share to H. B. Holman, one share to W. P. Hart, one share to A. B. Williams, one share to R. B. Williams, one share to J. D. Conway, one share to W. H. Carruth, one share to Thomas H. Simms, one share to J. K. Jones, and three thousand nine hundred and ninety-two shares to J. D. Beardsley. This was the first and only paid-up stock that was ever issued by the Washington and Hope Railway Company. The citizens of Washington and vicinity expended something over ten thousand dollars in constructing and grading the road-bed between Washing-

ton and Hope. Some time in the month of July, 1879, after the money was expended on the road-bed, the board of directors of the company began negotiations with J. D. Beardsley for the completing and operating the road. These negotiations resulted in a contract between the company and J. D. Beardsley by which he acquired the title to all the stock and property of the road except eight shares of stock which were reserved by the gentlemen named above to qualify them as directors of the company. Under that contract J. D. Beardsley went to work on the road and soon afterwards associated Vinton Alderman with him in the contract. They completed the original road between Washington and Hope. With what means they completed it or where they got those means I do not know. The road was afterwards accepted by the board of directors of the company as completed according to the contract, the completion to bear date January 1st, 1881. The resolution accepting the road was passed by the board on the 7th day of March, 1882, the formal examination of the road having been made by a committee appointed for that purpose on the 4th day of March, 1882. A copy of the resolution accepting the road by the board of directors, together with a copy of a letter from J. D. Beardsley to W. H. Carruth, president, are hereto attached, market Exhibit A, and made part of this deposition. In addition to the stock and property of the road given to Beardsley under the contract of construction the board of directors agreed to give him the road-bed already constructed in part, on which over ten thousand dollars had
659 already been expended, and in addition thereto to give him all the lands accruing to said company under an act of the General Assembly entitled "An act to donate certain lands to the Washington and Hope Railway Company," approved March 5th, 1879, and in addition thereto the board of directors agreed to procure personal obligations of citizens aggregating the sum of ten thousand dollars, payable to J. D. Beardsley, one-half thereof payable ten days after the completion of the road and the other half thereof payable one year thereafter. My recollection is that of these bonus notes about eight thousand was raised.

Exhibit "A" to this deposition shows the disposition of the balance. The hundred thousand dollars of stock issued to the Washington and Hope railway was delivered to the parties to whom it was issued, and when the Arkansas and Indian Territory railway was organized and purchased the property and franchises of the Washington and Hope railway this stock was surrendered upon an agreement and understanding that it should be replaced by stock in the Arkansas and Indian Territory railway.

In point of fact there was never any stock issued in the Arkansas and Indian Territory railway.

The terms of this purchase and sale are shown by Exhibit "G" to the plaintiff's complaint. At the suggestion of the management of the Iron Mountain railway, with whom Mr. Beardsley was negotiating for money and materials for the extension of the road, the Arkansas and Louisiana Railway Company was organized and purchased the rights, properties, and franchises of the Arkansas and In-

dian Territory railway. Exhibit "H" to plaintiff's complaint shows the terms of this sale. There have been issued in the Arkansas and Louisiana Railway Company two thousand shares of stock of the value of one hundred dollars each, as follows: Ten shares to H. B. Holman, ten shares to W. P. Hart, ten shares to A. B. Williams, ten shares to R. B. Williams, ten shares to J. D. Conway, ten shares to W. H. Carruth, ten shares to Thomas H. Simms, ten shares to B. K. Jones, one hundred shares to Paul F. Beardsley, eighteen hundred and twenty shares to J. D. Beardsley, all dated June 20th, 1883. I do not know whether or not the one hundred shares issued to Paul Beardsley was ever delivered to him or not. His stock and that of J. D. Beardsley were delivered to J. D. Beardsley. The stock of the other parties was delivered to them. J. D. Beardsley came to me about the 20th of June, 1883, and told me, as I remember, that it was necessary to deposit the stock of the company as collateral security with the Iron Mountain people to procure money and material for the use of the road, and asked me to issue the stock, which I did, I suppose, in shares and amounts as he directed, though I do not remember that such was the case, but I think I would not have known to whom and in what amounts to have issued the stock except by his direction. About the same time he asked me to endorse my certificate of stock to him, which I did as of date June 22nd, 1883. Upon examination I find that the certificates of stock issued to W. H. Carruth, W. P. Hart, J. D. Conway, R. B. Williams, Thos. H. Simms, and A. B. Williams were endorsed on the 22nd of June, 1883.
660 The indorsements upon the certificates issued to J. K. Jones and H. B. Holman bear no date. Each indorsement is to J. D. Beardsley. There have been no certificates of stock in the Arkansas and Louisiana railway issued to him since that date. Upon examination of the records of the Washington and Hope railway I find that on the 11th day of June, 1880, the said company and J. D. Beardsley, with the consent and under the direction of the board of directors of said company, executed a mortgage to the St. Louis Bolt and Iron Company to secure the payment of fifteen thousand dollars, the purchase-money, as I understood, of materials for the construction of the road.

Exhibit "B" attached hereto is a copy of said mortgage and the proceedings of the board of directors of said railway company in connection therewith.

Exhibit — to defendant's answer is a copy of the contract between the Washington and Hope Railway Company and J. D. Beardsley.

There was a mortgage executed by the Arkansas and Indian Territory Railway Company to the Mercantile Trust Company of New York as trustee for the holders of the bonds to be issued by the Arkansas and Indian Territory railway. Fifty thousand dollars of bonds were issued under said mortgage and certified by the Mercantile Trust Company as trustee and delivered to J. D. Beardsley on account of construction. When the Arkansas and Louisiana railway entered into the construction contract with J. D. Beardsley one of the conditions of that contract was he should cancel and surrender the fifty thousand dollars of Arkansas and Indian Territory

bonds in order that the mortgage executed by the Arkansas and Louisiana Railway Co. might become the first mortgage on the property of the company. A copy of the mortgage executed by the Arkansas and Indian Territory Company is hereto attached, marked Exhibit "C," and a copy of the mortgage executed by the Arkansas and Louisiana Railway Company to the Mercantile Trust Company is hereto attached, marked Exhibit "D." Each of these mortgages was ratified by the stockholders and directors according to law.

Question. From the records kept by you as secretary does it appear that — the first meeting of the directors and of stockholders held after the organization of the Arkansas and Indian Territory Company that Paul F. Beardsley was a stockholder and director in said company.

Answer. It does. This meeting was held on the 14th day of September, 1882.

Q. Do you know for what sum the lands donated by the State of Arkansas to the Washington and Hope Railway Company was sold? If so, about what date, to whom, and what application was made of the money?

Ans. The lands were sold to Lorin A. Gates, of the State of Iowa, I think, in the month of June, 1884, and I think for about the sum of sixty-two hundred dollars. I do not know what disposition was made of the money.

661 Cross-examination:

I was a director of the Arkansas and Louisiana railway at the time the construction contract was formed. I know of no one, except J. D. Beardsley and the said Arkansas and Louisiana Railway Company, being interested in the contract. I have been on very intimate terms with J. D. Beardsley during the time he has been at Washington and have been on friendly terms with Paul F. Beardsley, though I cannot say that I have been intimate with him. I never heard either of the parties say that P. F. Beardsley had an interest in the road or construction contract until about the first of February, 1886.

Ques. Will you please state what you heard stated by either of them on the occasion to which you refer, viz., about the first of February, 1886?

Ans. I decline to answer without Mr. Paul Beardsley's consent. The conversation referred to was a confidential, friendly conversation, as I understood it, and I am not inclined to violate the confidence he reposed in me.

Q. Was he consulting you at the time as an attorney, and is it what you as a lawyer understood to be a privileged communication on account of the relation of attorney and client subsisting between you at that time?

Ans. I did not understand at that time that he was consulting me as his attorney.

(By the counsel for the plaintiff:) I do not know what the conversation was nor the purport of it, but I am willing for the witness to state Mr. Beardsley's and his conversation about the matter.

(The plaintiff also consents to this.)

Q. You will now please to state the conversation so far as it related to the interest of the plaintiff in the property in controversy and to the memorandum agreement exhibited with his deposition in this case.

Ans. On the 2nd day of February, 1886, I think, in the depot in the town of Nashville, I had, as I have stated, a confidential conversation with the plaintiff, in which the question of his interest in the Arkansas and Louisiana railway was discussed. At that time he exhibited to me the memorandum of sale delivered to him by J. D. Beardsley and upon which this action was based. He told me that the matter had never been mentioned between himself and J. D. Beardsley since the memorandum had been delivered, and that he had always considered that he owned a third interest in the road and the construction contract; that he did not know how J. D. Beardsley regarded the matter, but that he was afraid that J. D. Beardsley did not view the matter as he did. I told him under the circumstances that he ought to go at once and see J. D. Beardsley and have a definite understanding with him and have their relative interests in the road settled. I asked him — he had ever stated to anybody that he owned an interest in the road. He said he had done so frequently. I told him that if he had never told anybody so that J. D. Beardsley must have spoken of it, for I had heard it as a rumor that
662 he, the plaintiff, owned an interest in the road, though I had never heard either him or J. D. Beardsley say anything about it. During the course of that conversation Mr. Paul Beardsley detailed to me fully his side of the case and all the surrounding circumstances. I was deeply impressed with the justness of his claim. I told him that while the directors of the company had contributed large amounts of money towards the construction of the road that they held their stock nominally, and it was a question*able* in my mind whether the corporate existence of the company might not be destroyed, and if it were done I thought he and J. D. Beardsley would be held to be partners in the road.

Ques. Did he make any other statement to you that you remember in regard to the memorandum agreement?

Ans. In the same conversation my recollection is that he told me he expected J. D. Beardsley had forgotten giving him the memorandum.

Q. You stated in your examination-in-chief that the stock of the Washington and Hope railway was surrendered at the time the properties and franchises of that road were sold to the Arkansas and Indian Territory Company. Please state fully what arrangement, if any, was made in that transfer as well as in the transfer from the Arkansas and Indian Territory Company to the Arkansas and Louisiana Company for replacing or substituting the original stock held by the stockholders of the Washington and Hope railway, and whether the same was assented to by the stockholders.

Ans. As stated in my examination-in-chief, the Washington and Hope Railway Company was sold to the Arkansas and Indian Territory Railway Company for the sum of a hundred thousand dol-

lars capital stock of the Arkansas and Indian Territory. That stock was to be issued and delivered to the holders of the stock in the Washington and Hope Railway Company for the purpose of replacing their stock, but the stock was in fact never issued. When the Arkansas and Indian Territory sold to the Arkansas and Louisiana the latter company assumed the debts and contracts of the former, with the further agreement to issue a hundred thousand dollars of its paid-up capital stock to replace the stock of the Washington and Hope Railway Company, which had not been done by the Arkansas and Indian Territory Company. These arrangements were assented to by the stockholders and directors and carried out.

Q. For what purpose was the two hundred thousand dollars of stock issued by the Arkansas and Louisiana railway in 1883?

Ans. One hundred thousand dollars of it was issued for the purpose of carrying out the contract of the Arkansas and Indian Territory Company to replace one hundred thousand dollars in the Washington and Hope Railway Company. The other hundred thousand dollars was issued to pay for changing the gauge and material and work done on the road between Hope and Washington. Under the provisions of the construction contract one hundred shares of the first hundred thousand dollars of this stock was
663 issued in the name of P. F. Beardsley and delivered to J. D. Beardsley—for what purpose I do not know.

Q. To whom and in whose name was the stock that was issued under the construction contract issued?

Ans. It was issued in the name of J. D. Beardsley, to him, and delivered to him for work done under the construction contract.

Q. Had not the greater part or all of the money obtained by J. D. Beardsley from the Iron Mountain railway for construction purposes been gotten prior to June, 1883?

Ans. I think so.

Q. Then were you not mistaken when you stated in your examination-in-chief that J. D. Beardsley told you about the time the stock was issued, in June, 1883, that it was necessary to deposit the stock with the Iron Mountain people to procure money for the use of the road?

Ans. It is probable that I was mistaken in my recollection of what J. D. Beardsley told me when he directed me to issue the stock. He told me that he had assigned to Geo. C. Smith, the private secretary of Cap. R. S. Hayes, a half interest in the construction contract, and he told me at the time that he asked me to indorse my certificate of stock that he wanted to deposit the certificates of stock of all directors with Cap. Hayes; that the stock of the directors — either party a controlling interest in the road, and he had it indorsed to himself, though it was never transferred on the books. The fact that the stock was issued on the 20th of June and the indorsement made on it on the 22nd of June leads me to the conclusion that his purpose of having the stock issued was to deposit it with Cap. Hayes under the assignment of the half interest of the construction contract instead of as collateral security, though I do not remember what he did state to me at the time the stock

was issued. I think this conversation occurred about the time the stock was indorsed.

Q. What become of the stock subscriptions on the articles of association of the Arkansas and Louisiana and the Arkansas and Indian Territory railways? Were they ever paid, and were they more than nominal subscriptions?

Ans. So far as I know, none of them were ever paid except J. D. Beardsley's. How much of his was paid I do not know. The understanding was that stock should be issued to those of the stockholders in the Washington and Hope railway who had paid their subscriptions in full, and that the payments theretofore made by them should go in lieu of any further payments, it being desired to retain a sufficient number of stockholders to constitute a legal directory. Major J. D. Beardsley was *relieving* money and material from the Iron Mountain and using it in the construction of the Arkansas and Louisiana road, and I regarded all money and material put into the road by him as payments upon his stock subscription, no matter from what source it came, and it was with this view that I joined in the affidavit that one thousand dollars per mile of the capital stock of the contemplated road had been subscribed and five per cent. thereof had been actually paid in. No stock was ever issued under the subscription referred to, I think.

664 Redirect:

The length of the Arkansas and Louisiana Railway Company as completed is about twenty-six miles, and the capital stock, as fixed by the articles of association, is one million two hundred thousand dollars for the entire length of the road as completed. The board of directors and stockholders have authorized an issue of stock to the amount of twenty thousand dollars per mile and bonds to the amount of fifteen thousand dollars per mile. Exhibit E, attached hereto, is a copy of the resolution authorizing said issue of stock and bonds.

Q. At the time you had the conversation in the Nashville depot with Paul Beardsley detailed in your cross-examination had there not then arisen some differences between the two Beardsleys?

Ans. Paul Beardsley told me in that conversation that his family and J. D. Beardsley's family were then having some trouble or disagreements. I do not remember whether he stated that he and J. D. Beardsley were having any trouble. I was not Paul Beardsley's attorney and never heard of any trouble or dispute between the parties until the conversation between Paul Beardsley and myself mentioned in my cross-examination.

Further the deponent saith not.

R. B. WILLIAMS.

665 PAUL F. BEARDSLEY, Plaintiff,
v.
J. D. BEARDSLEY, Defendant.

Interrogatories to be Propounded to Mr. Vinton Alderman, a Witness for the Defendant.

Question 1st. State your name, age, and place of residence; also business and occupation.

Answer. Vinton Alderman; about fifty years; Wirt Co., Burning Springs, district West Va.; manufacture of lumber.

Question 2. Do you know the parties to this suit; if so, how long have you known each of them and where?

Answer. I know J. D. Beardsley, the defendant; have known him ten years in West Va. and Arkansas; I do not know Paul F. Beardsley.

Question 3. Have you ever had business relations with J. D. Beardsley, the defendant in this suit, in any other State than Arkansas; if so, when and where, and what kind of business?

Answer. I had business relations with J. D. Beardsley for several years in West Va. Our transactions were in connection with lumber business, financial matters, and general business. I have had quite large business transactions with him.

Question 4. Was there any written contract between you in the transaction of this business?

Answer. No; I had no written contract in any of these transactions with him.

Question. Were your business transactions with J. D. Beardsley complicated—that is, were they of a character that in the absence of a written contract might easily have led to dispute and trouble?

Answer. Yes; our transactions were quite complicated, and we might easily have had trouble and disputes.

Question 6. Were your business relations with him pleasant and satisfactory, and were your transactions closed up to the mutual satisfaction of both parties?

Answer. Yes; entirely so in all cases.

Question 7. Do you know of J. D. Beardsley making a purchase from the county of Shelby, State of Tennessee, consisting of
666 a lot of light iron rail, a narrow-gauge locomotive, fish-plates and bolts, and other railroad material; if so, about what time was this purchase made?

Answer. Yes; I know of his making such a purchase. It was in first of July, 1879.

Question 8. Do you know of J. D. Beardsley making a contract with the president and directors of the Washington and Hope Railway Company for the construction of that road; and, if so, do you know the terms and conditions of that contract; and, if so, how do you know them?

Answer. I know he did make such a contract; I know the terms and conditions; I have seen and read the contract.

Question 9. Do you know about what time J. D. Beardsley made this contract with the Washington and Hope Railway Company?

Answer. It was made in the month of September, 1879.

Question 10. Did you afterwards become a party with J. D. Beardsley to this contract? If so, upon what terms, and did you have, as between yourselves, a written contract defining what each should do and what each should receive?

Answer. I afterwards became interested in the enterprise. The terms were that each should contribute. The stock when received was to be equally divided. We were to settle between ourselves, and he who put in the least was to pay the other sufficient to equalize the outlays. We had no written contract as between ourselves.

Question 11. Was the Washington and Hope railway built under this contract?

Answer. It was built by us under the contract with the Washington and Hope Railway Company.

Question 12. Was the iron, material, and rolling stock purchased by J. D. Beardsley in Tennessee used in the construction and operation of the road?

Answer. It was.

Question 13. Where was the rest of the iron needed to complete the road obtained, and was it bought for cash or on a credit?

Answer. It was bought on a credit from the St. Louis Bolt and Iron Company of St. Louis, Mo.

Question 14. Of what State were you a citizen at that time?

Answer. Of the State of Ohio.

Question 15. At the time the road was completed or afterwards did you become desirous of selling your stock in the road; and, if so, why?

Answer. In the early part of 1881 I became desirous of selling my stock. The reason was I decided not to go to Arkansas to live, as I had intended. I did not expect any immediate dividends.

Question 16. About that time did you first offer to sell your stock, and to whom did you first offer it?

Answer. In the early part of 1881; to J. D. Beardsley.

Question 17. Did J. D. Beardsley accept your offer and buy your stock at that time or at any time when you offered it to him?

Answer. No; he did not.

667 Question 18. Did you afterwards offer your interest to any other party; if so, to whom?

Answer. Yes; I afterwards, *of* 1881, offered it to Col. Paramore, then president of the Texas and St. Louis railway.

Question 19. To whom did you finally sell your stock in the road, and at what price?

Answer. I sold it to J. D. Beardsley for $12,000.

Question 20. Please state what negotiations led up to the sale of your stock to J. D. Beardsley, what the terms of the sale where, and state also whether you have been paid in full; or, if not, how much is still due you on the sale.

Answer. There were really no negotiations. The first intimation I had that J. D. Beardsley would buy the stock was a letter saying he would take my interest at $12,000 if I would grant a credit on it. I wrote him at once that I would do so, and that I considered it sold

to him. I have been paid in cash and notes about $5,500. One note of $500 is not yet due. The balance on the purchase J. D. Beardsley still owes me.

Question 21. Did you and J. D. Beardsley ever have a settlement to equalize your respective outlays in the construction of the road?

Answer. No; we never did. It was understood that this purchase and sale closed the whole matter up between us.

Question 22. In selling out to J. D. Beardsley did you consider that you were selling your stock in a railroad, or that you were closing up a partnership existing between you and J. D. Beardsley?

Answer. I was selling him my stock which I was entitled to under our understanding. This was what we got for building the road.

Question 23. Had there been any correspondence between you and J. D. Beardsley in reference to the purchase of the stock immediately previous to the sale?

Answer. No; I do not know that we ever had any correspondence by letter about the sale. J. D. Beardsley used to come to Cairo, W. Va., and I met him there and talked the matter over with him.

Question 24. Did you ever have any correspondence with Paul Beardsley in reference to your stock, or did you have any knowledge of him in connection with your transactions with J. D. Beardsley?

Answer. I never had any correspondence with Paul Beardsley. If he had any connection with our transaction I did not know it.

Question 25. At or about what time did you make the sale to J. D. Beardsley?

Answer. About November 10th, 1881.

Question 26. Had you ever offered your stock for ten thousand dollars, or would you have sold it for that sum?

Answer. No, sir.

Question 27. Previous to J. D. Beardsley's writing you that he would take your stock at twelve thousand dollars if you would give him time enough to pay for it, had you offered it to him on a credit?

Answer. I think not. He had never before said he would buy it.

668 Question 28. Would you have sold your stock to Mr. Paul Beardsley on a credit?

Answer. No; I did not know him.

Question 29. How have you been paid the amounts you have received on account of this sale of your stock?

Answer. Partly in cash and partly in the individual notes of J. D. Beardsley and partly by sale of some property J. D. Beardsley had in West Va.

Question 30. In the payments received by you in cash or in notes has Mr. Paul Beardsley ever appeared, or have you ever had any reason to suspect that he was in any way a party or interested?

Answer. Mr. Paul Beardsley has never appeared. If he had anything to do with the matter I did not know it.

Question 31. Has your long acquaintance with J. D. Beardsley been of a close and intimate character?

Answer. Yes; I think I have known him quite intimately.

Question 32. Do you consider J. D. Beardsley a man who keeps his own counsel closely, or does he talk freely about his business?

Answer. I do not think him a close-mouthed man at all. He talks very freely about his private business.

Question 33. From your knowledge of him do you believe him to be straightforward and truthful?

Answer. I do.

Question 34. To whom do you look for the balance due you for the stock?

Answer. To J. D. Beardsley.

VINTON ALDERMAN.

669 W. H. CARRUTH, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy in the action aforesaid, did then and there on his oath aforesaid depose as follows, to wit:

My name is William H. Carruth, and I am fifty-one years old, and live in Washington, Hempstead county, Arkansas.

Int. 1. Do you keep the account of the Arkansas and Louisiana Railway Company and receive and disburse the money of that company as treasurer, and have you done the same for the Arkansas and Indian Territory Railway Company and for the Washington and Hope Railway Company?

Ans. I do and have.

Int. 2. At what time was the Washington and Hope railway first opened for business?

Ans. I find by reference to my cash account that I received the first earnings from the road on April 18th, 1880.

Int. 3. Has the road been open for business ever since, and have the earnings of that road and its successors gone continuously into the general funds coming to your hands as treasurer?

Ans. As far as I know they have.

Int. 4. Has J. D. Beardsley managed the road during the
670 whole period? And, if so, please state if you know the amount of his salary.

Ans. J. D. Beardsley has managed the road from the beginning. His salary was fixed by the board of directors at $2,000 per year, and so remained up to December 1st, 1883, and since Dec. 1st, 1883, his salary has been $200 per month.

Int. 5. Do you know whether he has drawn the full amount of his salary from the funds of the road; and, if not, do you know how much is due him? State as nearly as you can.

Ans. During the time his salary was at $2,000 per year the road was unable to pay, and he got or was paid but a part of the amount that was due him. As to the exact amount paid him I cannot say, but in my opinion less than half the salary allowed him was ever paid to him up to Dec. 1st, 1883, since which time his salary has been paid regularly at $200 per month up to August, 1886.

Int. 6. Do you know what Mr. Paul Beardsley's salary has been since he came to the road, and do you know of any overdraft by him from the funds of the road?

Ans. Mr. Paul Beardsley began to draw his salary from me Dec. 1st, 1883, at which time his salary was made $100 per month. He overdrew his account the first month about $39, and his overdrafts continued throughout the next year, and his overdrafts, though not charged directly to the road on my books, was always checked against the cash of the road in my hands, and in Dec., 1884, his debit balance was about $187, when, by order of J. D. Beardsley, I charged the road and credited Paul F. Beardsley with the amount to balance his account. Major J. D. Beardsley told me once or twice during that year that I must curtail Paul F. Beardsley's overdrafts, and when he finally told me to charge the road with the overdrafts he put me on notice that I would have to carry any overdrafts made by Paul F. Beardsley if I permitted him to make them in the future.

WILLIAM H. CARRUTH.

671 PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY and THE ARKANSAS AND LOUISIANA RAILWAY COMPANY. } 811. Decree.

This cause being brought on to be heard upon pleadings and proofs and Jones & Martin having been heard on the part of the complainant, and John M. Moore, A. B. & R. B. Williams, and J. D. Conway on the part of the defendants, and due deliberation having been had, it is ordered, adjudged, and decreed that the complainant, Paul F. Beardsley, is the equitable owner of one-third of the fully paid and the non-assessable stock of the defendant, Arkansas and Louisiana Railway Company, which has been issued in lieu of the stock of the Washington and Hope and the Arkansas and Indian Territory Railway Companies, amounting to one thousand shares of the face value of one hundred dollars per share, and one-third of the like kind of stock which has been issued under the terms of the construction contract of May 22nd, 1883, between said Arkansas and Louisiana Railway Company and the defendant, John D. Beardsley, amounting to one thousand shares of the like face value, and also a like proportion of such stock as should be issued under said construction contract for that part of said railway which has been constructed and is in operation between the towns of Washington and Nashville, and amounting to three thousand three hundred and thirty shares of the like face value, less one-third of eight shares of such stock which have been issued to qualify the directors of said company; and it is further ordered, adjudged, and decreed that the complainant is the equitable owner, subject to the lien thereon of the St. Louis, Iron Mountain and Southern Railway Company, of one-third of the first-mortgage bonds of the said railway company, amounting to two hundred and forty in number, which have been issued and certified and which are now held by the St. Louis, Iron Mountain and Southern Railway Com-

pany as collateral security and which are numbered from one to two hundred and forty, inclusive, and are of the face value of one thousand dollars each, and also a like proportion of such bonds as have been or should be issued under said construction contract of May 22nd, 1883, for that part of said railway which has been constructed and is in operation between said towns of Washington and Nashville and amounting to one hundred and sixty in number and of like face value. It is further ordered, adjudged, and decreed that the complainant is indebted to the defendant, John D. Beardsley, for balance due upon his purchase of one-
third of the stock of the Washington and Hope Railway
672 Company in the sum of three thousand seven hundred and ninety dollars and forty-four cents, with six per cent. interest from this date, which he shall pay to said defendant or his solicitor of record or into the registry of the court within ninety days from this date, and that upon such payment being made the said defendant shall deliver and convey to the complainant or his solicitors of record or into the registry of the court one-third of all the full-paid stock of said railway company, less one-third of eight shares issued to the directors, which has been issued or ought to have been issued to the said defendant upon any account whatever, and which one-third to be so delivered and conveyed amounts to seventeen hundred and seventy-five shares, of the face value of seventy-five dollars each, and that at the same time the said defendant will deliver to the complainant or his solicitors of record or into the registry of the court one-third of the one hundred and sixty first-mortgage bonds which have been earned under the construction contract aforesaid, but not certified or held as collateral security.

It is further ordered, adjudged, and decreed that the defendant railway company proceed without delay to do on its part whatever may be necessary to enable the defendant, John D. Beardsley, to comply with this decree; and for that purpose said Arkansas and Louisiana Railway Company, through its president and secretary and under its corporate seal, will issue and deliver to the said John D. Beardsley certificates of fully paid and non-assessable stock of said company for three thousand three hundred and thirty shares, of the face value of one hundred dollars per share. It is further ordered, adjudged, and decreed that the defendant, John D. Beardsley, as soon as he shall have received from the St. Louis, Iron Mountain and Southern Railway Company the two hundred and forty first-mortgage bonds of the defendant railway company now held as collateral security, or as soon as the debt due the said St. Louis, Iron Mountain and Southern Railway Company shall have been paid, shall deliver to the complainant one-third of all said bonds. It is further ordered, adjudged, and decreed that the said John D. Beardsley hold the legal title in trust for the use and benefit of the said Arkansas and Louisiana Railway Company to the following-described lands, to wit: Lot eight, in block thirteen, and lots five, six, eight, nine, and ten, in block twenty, all in the town of Hope, in Hempstead county, and all of blocks eighty-three, one hundred and four, one hundred and thirty-one, one hundred

and thirty-eight, and one hundred and forty-six, in the town of Washington, in Hempstead county; also the west quarter of southeast quarter of southwest quarter and east half of southwest quarter of southwest quarter of section thirty, township sixteen south, range twenty five west; also the southwest quarter of northwest quarter, the northeast quarter of southwest quarter, and the southeast quarter of the southeast quarter of section thirty-one, in township ten south, of range twenty-five west; also the southwest quarter of the northeast quarter and the northwest quarter of the northeast quarter, and the north half of the southwest quarter of section two, in township twelve south, of range twenty-five west; also the
673 southeast quarter of the southwest quarter in section thirty, in township nine south, range twenty-six west; also the northeast quarter of the southwest quarter and the southwest quarter of the southwest quarter, and the east half of the northwest quarter of the southwest quarter of section thirty, in township nine south, range twenty-six west; also the southwest quarter of the northwest quarter of section four, in township ten south, range twenty-six west; and part of the southwest quarter of the southeast quarter of section thirty-two, in township nine south, range twenty-six west, all in Hempstead county, Arkansas; also the following lands lying in the county of Howard, State of Arkansas, to wit, the north half of the southeast quarter of section twenty-six, township nine south, range twenty-seven west, containing eighty acres excepting two adjoining blocks of two acres each heretofore sold to F. W. Lee and D. B. Lane, described and bounded as shown in their deeds, and also excepting the lot now occupied by W. C. Sypert's store and the printing office, twenty-five by one hundred and forty-two feet, and a piece of land in the southeast corner of land heretofore conveyed and running north along the line between section- twenty-five and twenty-six, two hundred and fifteen feet, thence in a line due west at right angles four hundred and thirty feet; thence due south at right angles two hundred and fifteen feet to south line of land hereby conveyed; thence at right angles along said line to point of commencement, all containing about two acres, being the same land conveyed by W. C. Cypert and K. K. Sypert to J. D. Beardsley, by deed bearing date January 11th, 1884.

Also the following-described lands lying and being situate near Nashville, in Howard county, in the State of Arkansas, to wit: The northwest quarter of the northwest quarter, the northeast quarter of the northwest quarter, the southeast quarter of the northwest quarter, the northwest quarter of the northeast quarter, the northeast quarter of the northeast quarter, the southwest quarter of the northeast quarter, and the southeast quarter of the northeast quarter, all known as the Rector place, and exclusive of lots sold previous to the 30th day of August, 1883, out of the northeast quarter of the northwest quarter and the north half of the northeast quarter (and not intended to include any land not owned by me on that day), all in section twenty-six, in township nine south, range twenty-seven west, and containing in all two hundred and thirty-seven acres, more or

less, conveyed by deed from A. M. Rector to J. D. Beardsley, of date January 1st, 1885.

And also holds the legal title in trust for the use and benefit of said railway company of a contract with the Pan Electric Telephone Company for the purchase and use of telephone instruments along the line of the said Arkansas and Louisiana Railway Company and in the territory contributory thereto, in the States of Arkansas and Louisiana, and also of the lines of telephones erected under said contract, and that he, within ninety days from this date, execute and deliver to the said Arkansas and Louisiana Railway Company proper deeds and instruments of conveyance, conveying to said railway company the legal title to all of said lands and improve-
674 ments thereon, and all rights, benefits, and advantages accruing under the contract now held by him with said Pan Electric Telephone Company and any line or lines of telephone that have been built.

It is further ordered, adjudged, and decreed that the said John D. Beardsley, his agents and attorneys, be perpetually enjoined and restrained from in any manner controlling, conveying, disposing of, or incumbering any part of the property, real or personal, including the bonds and stock, herein decreed to belong to and by him conveyed to the complainant or to the Arkansas and Louisiana Railway Company except in the manner ordered in this decree.

It is further ordered, adjudged, and decreed that all interest of the plaintiff in the contract of May 22nd, 1883, from this date is extinguished and annulled, and said plaintiff shall not be entitled to claim, have, or receive any benefits under or by virtue of said contract for any work hereafter performed thereunder, provided that so much of said construction contract as gives to said defendant, John D., all the earnings of the defendant company for the term of five years shall have no application as between the plaintiff and any other present or future stockholder and the defendant, John D., as to the present constructed line of road, but the plaintiff and all other stockholders shall share in the net earnings of the present line of said road according to the stock held by them respectively in the same manner as if said contract had never contained said clause; and its provided that said contract and the rights, duties, and liabilitities arising thereunder shall not be in anywise impaired or affected as between the said John D. Beardsley and the said railway company by this decree except as hereinbefore specifically set forth and provided.

It is further decreed that the said John D. Beardsley pay all the costs accrued in this cause, and that this cause be retained for any further orders that may become necessary in the enforcement and execution of this decree.

675 The court delivered the following opinion:

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY and THE ARKANSAS AND LOUISIANA RAILROAD CO.

(Circuit Court U. S., East. Dist. Ark., April Term, 1886.) In Equity.

Jones & Martin, for complainant; John M. Moore, A. B. & R. B. Williams, and John B. Conway, for def'ts.

CALDWELL, *J.:*

The bill in this case seeks to establish the plaintiff's right to one-third of the paid-up stock and first-mortgage bonds of the defendant corporation which have been issued to the defendant, John D., or which he is entitled to have issued to him under the terms of a construction contract entered into between the defendant, John D., and the defendant corporation, and it also alleges that certain real estate described in the bill was purchased with the money of the corporation, and that other real estate was donated to the corporation for depot and other purposes, but that the defendant, John D., took conveyances therefor in his own name, and prays that he be required to convey the same to the corporation; and the bill contains similar allegation and prayer with reference to a telephone line constructed for the use of the road.

The pleadings and proofs satisfactorily establish the following facts: The town of Washington, the county-seat of Hempstead county, is situated about ten miles from the line of the
676 St. Louis, Iron Mountain and Southern railroad. It was without any railroad communication, and loss of trade and gradual decay were imminent unless some improved means for the transportation of freight and passengers between some point on the St. Louis, Iron Mountain and Southern Railroad and the town could be secured.

To accomplish this end, so far as the limited capital which could be commanded for the purpose would admit, some of the citizens of the town of Washington, on the 11th day of April, 1877, organized under the general laws of the State regulating the formation of private corporations the Washington and Hope Tramway Company. The capital stock of this corporation was fixed at $20,000.00 and its object declared to be the construction of a tramway from the town of Washington to the town of Hope, on the line of the St. Louis, Iron Mountain and Southern railroad, a distance of nine or ten miles.

On the 31st day of May, 1877, the Washington and Hope Tramway Company was, by appropriate proceedings, merged in the Washington and Hope Railway Company. The capital stock of this corporation was $45,000.00, which was afterwards increased to $100,000.00, and its object the construction of a railroad from the town of Washington to the town of Hope.

The corporation begun the work of constructing a narrow-gauge

railroad between the towns mentioned and had procured and cleared *of* the right of way and graded a considerable portion of the road-bed when it entered into an agreement with the defendant, John D. Beardsley, to the effect that if he would complete the road the company would transfer to him all the stock and property of the corporation, including a grant of lands made by the State to the company to aid in the construction of its road and valued at $6,000.00 or $8,000.00, and would also give him a bonus of $10,000.00, to be donated by citizens interested in having the road built.

One Vinton Alderman had an equal interest in this contract with the defendant, John D., but the fact did not appear in the contract.

The defendant, John D., seems to have had but little, if any, capital, and, notwithstanding the liberal terms of the construction contract, for lack of means the building of the road progressed slowly and imperfectly, wooden stringers instead of iron rails having been put down and used for awhile on a part of the road. The road was completed on the — day of ——, 18—, to the satisfaction of the company, and thereupon all the shares of the capital stock of the company, in amount $100,000, less a few shares to qualify a board of directors, were issued to and in the name of the defendant, John D., no part of it having been regularly assigned to Alderman, although he was the equitable owner of one-half of it.

The road was not first class in its construction or appointments and was kept running with difficulty, its earnings for some time being inadequate to defray running expenses.

Alderman returned to West Virginia, the State of his residence, and in the fall of 1881 offered his half interest in the road
677 for sale. About this time the plaintiff, who is a brother of the defendant, John D., and who had been residing in California, where he had met with reverses in business, came East. The defendant, John D., met him in St. Louis, brought him to the town of Washington, and showed him over the line of the road.

The plaintiff went to New York city on business of his own, and while there, at the request of the defendant, John D., tried to raise means to put the road in better condition. The plaintiff's trip to New York was fruitless of results either to himself or his brother, and the defendant, John D., thereupon gave him employment on the road at a salary of $75.00 per month.

When it was known that Alderman would sell his half interest in the road for $12,000.00 on an indefinate credit the plaintiff, who was a stranger to Alderman, proposed to defendant, John D., that he should make the purchase of the Alderman interest and then sell it to him on like terms.

The defendant, John D., declined to let the plaintiff have the whole of the Alderman interest, but after purchasing that interest for $12,000 he sold two-thirds of the same, or $33,250.00, to the plaintiff for $8,000.00, that being the price at which it had been purchased from Alderman, the plaintiff agreeing to pay therefor when and as fast as the earnings and income from the road would enable him to do so.

A day or so after the sale of the stock to the plaintiff the defendant executed and delivered to him the following writing:

"WASHINGTON & HOPE RAILWAY COMPANY,
WASHINGTON, ARK., *Jan.* 1*st*, 1882.

Memorandum.

I hold the stock of the Washington & Hope Railway Company—thirty-three thousand two hundred and fifty dollars ($33,250.00), or thirteen hundred and fifty shares—which is sold to Paul F. Beardsley, and which, though standing in my name, belongs to him subject to a payment of $8,000.00, with interest at the same rate and from same date as interest on my purchase of Mr. Alderman's stock.

J. D. BEARDSLEY.

Witness:
J. H. BURT."

There is nothing in the record to show what rate of interest the defendant, John D., agreed to pay Alderman, nor from what date it was to run, but having regard to the language of the writing, "with interest at same rate and from same date as interest on my purchase of Mr. Alderman's stock," the presumption probably would be that the rate of interest was the legal rate, viz., six per cent., and that it run from the date of the purchase; nor is there anything in the record showing in terms when or how the defendant, John D., was to pay Alderman, but it is apparent from the testimony that the defendant,
John D., had no resources or means of paying Alderman out-
678 side of the road itself or its earnings, and this was known to
Alderman. It is obvious, therefore, that Alderman sold his stock upon the understanding that the defendant, John D., was to pay therefor as the means derived from the operation of the road would enable him to do so; and it is equally clear that the sale of the stock by the defendant, John D., to the plaintiff was made on the same terms.

It is indisputable that all parties understood that the road or its earnings was the only source from which the means could be derived to liquidate the obligations incurred in the purchase of the stock by the Beardsleys. They had no capital and the corporation itself was insolvent.

The defendant, John D., himself testifies that the corporation was at this time insolvent and existed by the forbearance of its creditors, and that its stock had no value. These facts were known, and it was well understood that it would require time and good management and hard work and the practice of the most rigid economy by the owners of the property themselves to give it any value.

The brothers were men of good business capacity and great energy and industry, and were capable of performing and did perform every kind of labor connecting with the building, repair, and operation of the road—from track-laying and bridge-building to that of locomotive engineers and machinists. Their ability and willingness to work constituted their capital, and of this kind of capital they had

a prodigious amount. By working without regard to hours or weather and the practice of the most rigid economy compatible with the subsistence of themselves and families, the road was gradually put in better condition and its earnings made to pay operating expenses, including a salary or allowance of 200 per month to the defendant and $100 to the plaintiff, their salaries or allowances being proportioned to their respective interests in the road.

It soon became apparent that to make the enterprise a paying investment the road would have to be extended westwardly from Washington to Nashville, in Howard county, a distance of some sixteen miles, and steps were taken to endow the company with the requisite corporate power to extend the road.

It is not necessary to set out in detail all the different steps taken to accomplish this purpose. In the first instance, the name of the corporation was changed to the Arkansas and Indian Territory Railway Company, and some other changes were made in the charter, but this company afterwards conveyed to the present corporation its road-bed, property, and franchises, which consisted entirely of the road and property of the Washington and Hope Railway Company, and is heard of no more, and probably ceased to exist. It was a mere conduit through which the property and franchises of the Washington and Hope Railway Company passed to the present corporation. The present corporation, the Arkansas and Louisiana Railway Company, was formed to take the place of the preceding corporation, with a charter authorizing it to build a railroad northwesterly from Washington to the Indian Territory and southeasterly from Hope to Louisiana. By an amendment
679 of its charter, the capital stock of the present corporation was fixed at $2,400,000.

The road, property, and franchises of the Washington and Hope Railway Company were conveyed to the present corporation, which assumed the debts of the old corporation and was to issue its stock in lieu of the stock issued by the old corporation. The new corporation had no property or assets other than what it derived from the Washington and Hope Railway Company, and it was for all practical purposes that corporation under a new name, with authority to issue additional stock and extend the line of its road, and the rights and the relations of the plaintiff and defendant as stockholders and otherwise were the same in the new that they were in the old corporation.

While the new corporation, like the old, was an essential legal entity, its road and property were, as between the plaintiff and defendant, regarded as their individual property, owned as tenants in common, according to their respective interests as represented by their stock. All the stock issued or which could rightfully be issued as full-paid and non-assessable stock belonged to the plaintiff and defendant, except a nominal amount sufficient to qualify the requisite number of persons to act as directors. Some one hundred shares of stock were issued in the name of the plaintiff for some reason that is not very clear, but the plaintiff's remaining stock was held in trust by the defendant. John D. was the general

manager and director of the business and conducted it as he would if it had been his private business, except that the usual corporate forms were observed for legal purposes and because they were a legal necessity. His control of the corporation and its property was absolute. The directory did not direct and control him; he made, directed, and controlled the directory.

On the 22nd day of May, 1883, John D. drafted and submitted to the directory for their adoption a contract, which was agreed to and executed between himself and the company, for the immediate construction of the road to its present terminus and for the construction of the balance of the line in Arkansas, "as fast as the company may desire." This contract had a very extended retrospective operation.

For work done and improvements long before made on the Washington and Hope railway John D. was to receive $100,000 par value of the full-paid stock and $150,000 of the first-mortgage bonds of the present company, and for each mile of road built under the contract he was to receive $20,000 in full-paid stock and $15,000 of the first-mortgage bonds of the company.

The road from Washington to Nashville was also well advanced towards completion before this contract was entered into, and more than two-thirds of the materials advanced by the St. Louis, Iron Mountain and Southern Railroad Company to aid in its construction were advanced before the execution of this contract. The contract worked no change and was not intended to work any change in the previous relation of the parties.

The road had been extended and was becoming valuable by the work and exertion of these brothers. Debts had been incurred
680 in extending and improving it. The St. Louis, Iron Mountain and Southern Railroad Company, moved to do so, probably, because the line from Hope to Nashville would operate as a feeder to its road, furnished money and materials to assist in building the road from Washington to Nashville to the amount of $120,000 or more. This debt could only be secured by the stock and bonds of the company. A further extension of the road was contemplated. The road belonged in law to the corporation, to the artificial being, and the owners of all its stock could not sell or mortgage it as their property, although they had built it.

It was then perceived that to make the road available as security for debts already incurred and any that might be incurred in the further extension of the road resort must be had to the corporation, which must upon some sufficient consideration issue its stock and bonds to those who had built the road and contemplated extending it. The object could be accomplished best through the agency of a construction contract which should provide for issuing the stock and bonds of the corporation for the work already done, as well as any that might thereafter be done.

These considerations led to the construction contract.

The defendant, John D., was named as contractor, but in all that he did, either before or after the making of this contract, he was acting for himself and the plaintiff according to their respective interests in the property.

The road was extended to Nashville by the use of its earnings, by borrowing on its credit, and by the labor and toil of the plaintiff and defendant. The defendant did not invest any of his private means in the work; indeed, it is quite clear that he had no capital to invest outside of his interest in the road. It was their joint work and the credit of their joint property that earned whatever was earned under the construction contract, both before and after it was made. The plaintiff must therefore be held to be the equitable owner of one-third of the full-paid and non-assessable stock of the company which had been or ought to be issued by the Washington and Hope or Arkansas and Indian Territory Railway Company, and of a like proportion of the stock and first-mortgage bonds of the defendant company which have been issued or which ought to be issued up to this date under the construction contract bearing date 22nd May, 1883.

It is believed these rights of the plantiff and the trust relation which the defendant sustained to the plaintiff would never have been questioned but for an unfortunate and bitter family quarrel which sprang up between the brothers and their families in February of this year. Denying the fact that the plaintiff has any rights such as he claims, the defence insists on various legal defenses. The written instrument relating to the purchase of the stock is not ambiguous. It does not show a conditional sale. The sale of the stock was absolute, the title passed, and the seller retained a lien for the price. Payment was to be made in the future, but that did not prevent the equitable title to the stock from vesting in the plaintiff at once.

Parsons on Contracts, 519–537.

681 This instrument converted the defendant into a trustee of the legal title for the plaintiff. The holder of the legal title may convert himself into a trustee by making a valid declaration of trust upon good consideration.

1 Perry on Trusts, sec. 384, note 4.

The relation of pledger and pledgee was created. The stock remained in the hands of the defendant as a pledge for the price. The delivery of the stock to the purchaser and its redelivery to the seller is not necessary to create this relation.

Colbrook on Collateral Securities, sec. 306.

The contract was not unilateral.

The writing does not contain the whole contract; that was verbal. The writing was executed after the contract was made and only disclosed a part of it. The contract bound both parties and each could enforce his rights under it. Upon the facts of this case tender of payment of the price of the stock was not necessary before filing the bill for several reasons:

First. The money was not due according to the terms of the contract. If it be conceded that the plaintiff's share of the earnings of the road, if they had been applied to that purpose, would have paid the debt, the defendant is not helped, because he alone handled

and directed the application of all the earnings and he cannot censure the plaintiff or put him in default for his own act.

Second. The defendant having received all the earnings of the road and appropriated a portion thereof to his own use, the plaintiff was entitled to a credit on his purchase for his share of the earnings appropriated by the defendant, and the amount of such credit could be ascertained only by a bill for an account.

Third. To a party who declares he will not be bound by a contract it is not necessary that a tender should be made.

2nd Wharton on Contracts, sec. 995.

It is a general rule that when the tender of performance is necessary to the establishment of any right against another party the tender is waived or becomes unnecessary when it is reasonably certain that the offer will be refused.

Hill *vs.* Exchange Bank, 105 U. S., 319.

Tacy *vs.* Irwin, 18 Wall., 549

It is said the plaintiff can have no interest in the construction contract or its fruits because he was a member of the board of directors at the time it was made. It is undoubtedly true that courts of equity look with great jealousy upon contracts made by directors with the corporations. Such contracts are not necessarily void, but they may be avoided by the corporation or stockholders who have not assented to or approved or participated in them if the objection is made in reasonable time; but the rule here attempted to be invoked has no application to this case, and if it had it could not be invoked by the defendant. The defendant, who had absolute dominion over the corporation as the legal holder
682 of all its stock, himself resigned as a director just before the execution of the contract, and placed his brother in the directory in his place, and himself proposed and submitted to the board the contract for execution, and it was executed accordingly. It will be observed that neither he nor the corporation complains that the contract was not honest and fair; on the contrary, the defendant insists that it is a valid contract between himself and the corporation, but that whatever interest the plaintiff would otherwise have had in the contract is forfeited to the defendant because the plaintiff was a director when the contract was made.

This would be an invasion of the rule invoked. The rule is intended to prevent fraud, but its extension and application to a case like this would make it an engine of fraud. The defendant knew the interest the plaintiff had in the contract when it was executed, and if the contract is invalid as to the plaintiff, it is invalid.

The contract and everything relating to it, including the making the plaintiff a director, was the work of the defendant, and the law will not deprive the plaintiff of his rights and confer them on the defendant for an act of his own or an act which he himself prompted and approved. Again, the motives for entering into this contract have been adverted to, and without repeating them it is sufficient to say they render this contention of the defendant utterly untena-

ble. The learned counsel for the defendant confessed on the argument that upon the facts it must be held that the defendant holds in trust for the company the legal title to the lands purchased with the money of the company and donated for depots and other purposes, and to the telephone purchased and built with the money of the company.

But it is contended that the plaintiff, though found to be a stockholder, cannot enforce this trust and compel a conveyance of the legal title to the corporation, and that any suit for that purpose must be brought by the corporation itself.

Undoubtedly, the general rule is that the company must sue to enforce such trust, but there are exceptions to this rule as well understood as the rule itself, and the case at bar falls exactly within one of these exceptions. It is well settled that a stockholder may enforce in favor of the corporation such a trust as is here conceded to exist, where the defendant holds a majority of the stock and has control of the corporation. An appeal to this corporation to enforce this trust against the defendant would have been nowise different from an appeal to him to sue himself. When, as in this case, the corporation is under the control of the party to be proceeded against its refusal to bring suit may be inferred, and a stockholder may maintain the suit without alleging or proving any demand or express refusal.

3rd Pomeroy Eq. Jur., sec. 1095 and note 1.
Heath *vs.* Erie R'y, 8 Blatch., 347.
Wood's Field on Cor., section 369.

When the jurisdiction of a Federal court is invoked for the protection of the corporation by a stockholder suing in that court, in
683 virtue of his citizenship, in a case in which the corporation itself could not sue in that court, the bill and proofs must show clearly that a demand on the corporation to sue would be useless or that the corporation expressly or by necessary implication refused to sue, and that the alleged refusal is real and not a mere sham and device to transfer the litigation into the Federal courts through the agency of a non-resident stockholder.

Hawes *vs.* Oakland, 104 U. S., 450.

In the case last cited stringent rules are laid down to prevent collusion between the corporation and its stockholders to commit what may be termed a fraud on the jurisdiction of the Federal courts. Such a purpose is required to be negatived very fully by exact and specific allegations which are not demanded for any other purpose.

3 Pomeroy Eq. Jur., sec. 1095, note 1.

In the case at bar the facts preclude any suggestion of collusion or an effort to work into the Federal court a case not within its jurisdiction. The alienage of the plaintiff gives the court jurisdiction. The enforcement of the company's right to these lands is an incident rather than the main design of the suit, the chief purpose of which is to establish and enforce a trust against the defendant in

favor of the plaintiff, the value of which would be lessened unless the right of the corporation to this property was also established, and which it was obvious never would or could be done by any other person than the plaintiff, who is the only person interested in enforcing the right.

The defendant appropriated to his own use the following sums derived from the earnings of the road and the sale of its property:

Paid to Alderman on purchase of stock	$5,000
Sale of old material	5,365 50
Invested in private residence	3,481 53
	$13,847 03

The defendant is equitably entitled to a credit on account of his purchase of stock from the defendant for one-third of this sum, viz, $4,615.67. This sum deducted from $8,000, the price plaintiff was to pay for the stock, leaves due of principal $3,324.33. There is no proof on the subject of interest, and it may be doubted whether it ought to be allowed, and if it is allowed the dates of payment are not given with such accuracy as to enable one to make an exact statement of the interest account. Without going into any nice calculation, I think it would be equitable to add two years' interest to this balance, making the whole sum due from the plaintiff on his purchase of stock $3,790.44. The decree will require the defendant, John D., within 90 days, to convey to the company the lands and telephone lines described in the bill. The plaintiff will be required to pay the $3,790.44 to the defendant or his solicitors of record, or into the registry of the court, within
684 ninety days from this date; and upon the payment of this sum the defendant, John D., will deliver to the plaintiff or his solicitors of record, or deposit in the registry of the court, one-third of all the full-paid stock and first-mortgage bonds of the defendant corporation (less one-third of the amount of stock issued to qualify directors) issued or which ought to be issued to the defendant, John D., upon any account whatsoever, including the stock and bonds earned to date under the construction contract bearing date May 22nd, 1883, and the defendant corporation will be required to do on its part whatever may be necessary to enable the defendant to comply with the decree.

Of the bonds and stock, if any, deposited with the St. Louis, Iron Mountain and Southern Railway Company as collateral security for the debt due from the defendant company to that company, the plaintiff must be held to have contributed one-third of the amounts deposited, and will not be entitled to receive the third of the bonds and stock so deposited until such debt is extinguished; and the like provision will be made in the case of any other existing deposit of the bonds or stock as security for a corporate debt.

All interest of the plaintiff in the construction contract will be extinguished from this date, because his relation to the road and the defendant, which made it eminently just that he should have that interest, has been dissolved. The defendant, John D., will

be required to pay the costs, and the cause will be retained for further orders that may become necessary in the enforcement and execution of the decree.

685 Come the parties by their solicitors, the complainants by Jones & Martin, and the defendants by A. B. Williams, J. D. Conway, and J. M. Moore, and upon the application of the defendant and in pursuance of the agreement and understanding had at the time the decree herein was rendered, it is ordered that the decree fixing the amount due the defendant, John D. Beardsley, be set aside, and that Thomas H. Simms be, and he is hereby, appointed a master to restate the account between the plaintiff and the defendant, John D. Beardsley, and fix the amount due the said John D.
686 from the plaintiff for the purchase-money of the one-third interest in the stock of the Arkansas and Louisiana Railway Company after allowing the plaintiff all credits to which he is entitled for payments made to said defendant and for money received by defendant by the sale of property of said company or otherwise with which he should be charged, and that he take said account and report the same to the court at the earliest day practicable.

687 In the Circuit Court of the United States for the Eastern District of Arkansas, Nov. Term Thereof, 1886.

Master's Report.

PAUL F. BEARDSLEY, Plaintiff,
v.
JOHN D. BEARDSLEY and THE ARKANSAS AND LOUISIANA RAILWAY COMPANY, Defendants. } 811.

To the Hon. Henry C. Caldwell, judge:

I have the honor to report that in obedience to the order of your honorable court, made on the 25th day of October, 1886, directing me to "restate the account between the plaintiff and the defendant," John D. Beardsley, and fix the amount due the said John D. Beardsley from the plaintiff for the purchase-money of the one-third interest in the stock of the Arkansas and Louisiana Railway Company, after allowing the plaintiff all credits to which he is entitled for payments made to said defendant and for money received by defendant from the sale of property of said company, or otherwise, with which he should be charged," and to state said account and report the same to your hon. court at the earliest day practicable—

I have carefully read the papers in this cause so far as they refer to items of account, and have found it necessary to take the deposition of one witness only, that of Vinton Alderman, which was necessary to establish the rate of interest and date from which it run on his sale of stock to the defendant, John D., as the sale by the said John D. to the plaintiff was made to conform thereto, as shown by the record.

The deposition of this witness (herewith filed and marked Exhibit A) states positively that the sale by him to the defendant, John D., of his stock in the Washington and Hope railway was made on the 10th day of November, A. D. 1881, and drew interest at the rate of eight per cent. (8) from date of sale, and I therefore charge the plaintiff, Paul F. Beardsley, with the sum of eight thousand dollars ($8,000), the amount of his purchase of stock from the defendant, as of date November 10th, 1881, and with interest thereon from that date, at the rate of eight per centum per annum, up to this date, December 24th, 1886, making the sum of his purchase and interest thereon amount to the sum of eleven thousand two hundred and seventy-eight and $\frac{22}{100}$ dollars ($11,278.22), with which I charge him on Exhibit B herewith.

This being the entire amount with which the plaintiff is chargeable, I now charge the defendant, John D. Beardsley, with such sums as under the decree and depositions herein I find him to be properly chargeable, and in doing so I will deal first with the item of five thousand five hundred and eighty-seven and $\frac{53}{100}$ dollars ($5,587.53), shown by the deposition of H. H. Wheless, auditor of the Arkansas and Louisiana Railway Company, to have been to the personal
688 and individual credit of the defendant, John D. Beardsley, on the books of his office on May 31st, 1886.

This credit was composed of the following items, as shown by the books of the auditor (copies of which I have) and the deposition of H. H. Wheless, to wit:

Old material sold		$4,732 50
Baltimore & Ohio checks	433 00 200 00	633 00
Goods returned to St. Louis previously charged to defendant		12 03
A stave machine sold by Alderman		200 00
One office lounge		10 00
Total of		$5,587 53

And the defendant had drawn against this credit up to the same date (May 31st, 1886), as shown by Wheless' deposition, the sum of five thousand and thirty-four and $\frac{7}{100}$ dollars ($5,034.07), which has since been increased by other debits to the sum of five thousand one hundred and ten and $\frac{27}{100}$ dollars ($5,110.27), as shown by a personal inspection of the books by me, copies of which I have subject to inspection. These credits were taken by the defendant on the auditor's books over two years before the beginning of this suit, and at a time when no good reason has been or probably could be shown why an incorrect entry or false entry should be made, so far as I am able to ascertain, and while the plaintiff in his deposition denies that the two Baltimore and Ohio checks ever passed into the funds of the company to the best of his knowledge and belief, yet the defendant, John D., states positively that the proceeds of both checks did actually pass into the company's funds, and his statement is strengthened and

fortified by that of Mr. Wheless, who states that in opening the auditor's books January 1st, 1884, he was instructed by the defendant to so enter them, he stating that the proceeds had so passed to the company, and as no motive has been shown why the defendant should at that time, if at all, cause incorrect or false entries to be made, and I feel satisfied and conclude that the net proceeds of these two Baltimore and Ohio railway checks did really pass into the hands of the company some time in the early part of the year 1882, but the net proceeds of the larger check are incorrectly stated (the railway books being burned in 1883 and the defendant stating the amount from memory) and should be for four hundred and eight dollars ($408.00) instead of four hundred and thirty-three ($433.00), as I have in my possession a letter from the general auditor of the B. & O. Railway Company, dated Nov. 29th, 1886, and marked Exhibit C hereto, stating that the check was drawn January 21st, 1882, for $533.00, and there being charges of one hundred and twenty-five dollars ($125.00) against it, as shown by the depositions of the plaintiff, the net amount should be four hundred and eight dollars ($408.00) instead of $433.00, making the net proceeds of the two checks amount to $608.00.

689 I therefore deduct from the defendant's debits or amounts drawn from the road by him of $5,110.27 the net amount of these two railroad checks, say $608.00, as these were private funds put into the treasury of the road by the defendant and could be withdrawn therefrom without being chargeable to the plaintiff or any one else for any part thereof, and being deducted leaves the sum of four thousand five hundred and two and $\frac{27}{100}$ dollars ($4,502.27) as the net amount drawn out of the funds of the road against said credits, in which the plaintiff has a one-third interest under the decree. The remaining balance to the credit of the defendant on this account is undrawn and has been passed to the credit of the company on the auditor's books in my presence, and the account of the defendant, John D., has been and is now closed on said books.

I therefore charge the defendant, John D. Beardsley, with the one-third of the sum so drawn from the funds of the company, viz., $4,502.27, the one-third part thereof being $1,500.75, as shown by Exhibit "D" hereto, and as the items composing this debit were not drawn by the defendant until the years 1884, 1885, and 1886 (Wheless fixes them between April 28th, 1884, and May 31st, 1886), the largest item being charged in July, 1885, I charge the defendant with interest thereon at 8% from August 1st, 1885, to December 24th, 1886, that being a mean date as near as I can readily fix it, as shown by the dates of the items composing the account which has been copied from the auditor's books for me. The testimony of Mr. Wheless (as well as the account itself) shows conclusively that the cost of the dwelling erected by the defendant, John D., in the town of Washington is included in the debits to his account as herein dealt with and should not again be charged to him. I also charge the defendant, Jno. D., with one-third of the sum of forty-eight hundred dollars ($4,800.00) paid by

the railway company to Vinton Alderman on a personal debt due him by the defendant, in which the plaintiff had no interest, which debit, with proper dates and items composing it, will appear by reference to Exhibit "D" herewith, interest being charged on each item from date until Dec'b'r 24th, 1886, at 8% per annum.

Mr. Wheless testifies that the sum of fifty-five hundred dollars had been paid to Mr. Alderman, two hundred of which were the proceeds of the sale of a stave machine belonging to the defendant and five hundred dollars the personal acceptance of the defendant, John D., not then due. The stave machine being the private property of the defendant and its proceeds being paid to Mr. Alderman on a personal debt due him by the defendant, I am unable to see wherein the plaintiff has any interest therein that should be made the subject of a charge against the defendant, and the acceptance of $500, given Alderman by the defendant, maturing July 26th, 1886, was in fact paid by the company when due, as shown by the auditor's books, but the defendant reimbursed railway's treasury for this sum on November 5th, 1886, by paying into the treasury of the company that much money, which was properly and regularly credited by the treasurer on the account of the railway company; these two items, therefore, of stave machine, $200, and personal pay-
690 ment of $500 by the defendant accounting for and equalling the difference between the amount testified by Wheless to have been paid to Alderman, viz., $5,500, and the sum herein charged to the defendant as having been paid to him out of the funds of the company, viz., $4,800.00.

The entry covering this $500 returned to the railway treasury by the defendant was seen and inspected by me in person on both the journal and ledger containing the accounts of the treasurer, and is dealt with from personal knowledge, not hearsay, and under this state of case I did not think it necessary to take the deposition of the treasurer, W. H. Carruth, to establish it further.

The cotton-seed transactions referred to in the depositions of plaintiff, defendant, and H. H. Wheless are not sufficiently clear and satisfactory to my mind to warrant the charge of any part thereof to the defendant in this account, and I omit any mention of it among the items so debited to him.

The whole amount charged herein to the defendant, John D. Beardsley, as being due to the plaintiff, with interest added, amounts to the sum of three thousand five hundred and twenty-one and $\frac{93}{100}$ dollars ($3,521.93), see Exhibit "D," which deducted from the amount due to the defendant by the plaintiff of eleven thousand two hundred and seventy-eight and $\frac{22}{100}$ dollars ($11,278.22), see Exhibit "B," leaves as due to the defendant, John D. Beardsley, by the plaintiff, Paul F. Beardsley, on the 24th day of December, 1886, the sum of seven thousand seven hundred and fifty-six and $\frac{29}{100}$ dollars ($7,756.29), with which I now charge him and so report to the court.

Additional depositions of W. H. Carruth, H. H. Wheless, and the defendant, John D. Beardsley, taken on behalf of the defendant on the 2nd day of December, 1886, before John H. Arnold, a notary public of Hempstead county, were sent me through the mail and

opened and filed on the 4th inst. and marked Exhibit "E" to this report; but if I understood aright the verbal instructions of the court given me at chambers since my appointment, concerning the scope of my powers and authority in restating the account in this case, I am not permitted to take depositions generally, but only on the item of interest on the purchase by the defendant from Vinton Alderman, thus fixing the same rate and date between the plaintiff and defendant, that being open in the record of this case, and that I should confine myself to such items only as were referred to in the papers at the date of the decree; hence I have not considered these depositions in stating this account.

For a like reason I have refrained from considering the testimony of the defendant, John D., and others as to a debt due him by the railway company for material, &c., furnished by him and used in the railroad prior to the date of the sale of the stock by him to the plaintiff, being informed by your honor that the decree rendered herein fixed the status of both parties—plaintiff and defendant—on that date, viz., Nov. 10th, 1881, and I could only deal with transactions subsequent to that time in stating this account, and for like reasons and under instructions received from the court I omit to

691 charge the plaintiff with any portion of certain sums shown by the proof in the case to have been overdrawn from the treasury of the company on salary account by him, and do not refer to them in the account.

Having faithfully, impartially, and to the best of my ability performed the work assigned by the court, I respectfully submit this report and asked to be discharged from further duty in connection therewith.

Very respectfully, THOS. H. SIMMS, *Master.*

Little Rock, Ark., Dec. 24th, 1886.

692 PAUL F. BEARDSLEY
v. } 811.
JOHN D. BEARDSLEY *et al.*

This day comes the complainant, by Jones & Martin, Esqs., his solicitors, and the defendants, by J. M. Moore, Esq., their solicitor, and the motion of complainant to strike from the files the depositions returned by the master with his report in said cause, as also the exceptions of the complainant and of the defendant, respectively, to said report, are submitted to the court, and the court doth overrule complainant's motion to strike said deposition from the files, and it doth likewise overrule the several exceptions filed by the complainant and the defendants to the report of the special master and approve and confirm said report.

It is therefore by the court ordered, adjudged, and decreed that the complainant pay unto the defendant, John D. Beardsley, or into the registry for him, the sum of seven thousand seven hundred and fifty-six dollars and twenty-nine cents ($7,756.29) within thirty

days from the date of this decree, with interest thereon at the rate of eight per cent. per annum from the 24th day of December, 1886, until paid; and upon the payment of said sums that the defendant, John D. Beardsley, convey and deliver unto the complainant or to his successors of record or into the registry of the court one-third
693 of the full-paid stock of the Arkansas and Louisiana Railway Company (less one-third of eight shares issued to the directors) which has been issued or ought to have been issued to the said defendant, John D. Beardsley, on any account whatsoever, and which one-third so to be delivered and conveyed amounts to seventeen hundred and four shares of the face value of one hundred dollars each, and that at the same time said defendant deliver and convey to the complainant or to his solicitors of record or into the registry of the court one-third of the one hundred and forty-four first-mortgage bonds which have been earned under the construction contract between said defendant and said railway company, but not certified nor held as collateral security; and as soon as he shall have received from the St. Louis, Iron Mountain and Southern Railway Company the two hundred and forty first-mortgage bonds of the defendant railway company now held as collateral security, or as soon as the debt due the St. Louis, Iron Mountain and Southern Railway Company shall have been paid, that he deliver to complainant one-third of said bonds; and it is further ordered, adjudged, and decreed that the defendant, John D. Beardsley, has a lien on the one-third interest sold by him to the complainant in the stock and bonds of the Arkansas and Louisiana Railway Company for the payment of the sum of money herein adjudged to be due him from the complainant; and if the complainant shall fail to pay said sum within the time aforesaid it is ordered that Charles P. Redmond, as the master of this court, after having advertised the same for ten days by two publications in a daily newspaper published at the city of Little Rock, proceed to offer the aforesaid interest of the complainant in the said stock and bonds—it being the same hereinafter described—for sale to the highest bidder for cash in hand at the front door of the building in which this court is held; and upon the payment by the purchaser of the amount bid by him that he execute and deliver to such purchaser a certificate of sale therefor, and that he forthwith report his proceedings to this court for such further order therein as may be necessary.

It is further ordered that the defendant, John D. Beardsley, have such of said stock as is in his possession and control present at said sale and deliver the same to the master to be delivered to the purchaser, and for that purpose that the defendant railway issue and deliver to the said John D. such of said stock as has not been issued; and it is further ordered and decreed that the defendant, John D. Beardsley, pay all the costs of this proceeding except the cost of the aforesaid sale and the orders of the court in pursuance thereof, which shall be paid by the complainant, and that the sum of one hundred and fifty dollars be allowed to the special master, Thomas H. Simms, for his services.

And that the court retain control of this cause for any further orders that may be necessary.

(Signed) J. M. MOORE.
JONES & MARTIN.

694 Statement of indebtedness of Arkansas and Louisiana R'y Co. to John D. Beardsley filed with Judge Caldwell at former hearing.

To Paul F. Beardsley, Dr.

One-third of old material of Washington & Hope R'y..	4,732 50
Standing desk bro't from Cin.....	36 00
Cash from B. & O. R'y	633 00
Stave machine sold by Alderman.....	200 00
Lot of material, consisting of trucks, wheels, chains, &c., sold to W. & H. R.....	98 00
Goods returned to St. L. H'dw. & Cut. Co.....	12 03
Proceeds of a car of old iron.....	237 47
Lounge for office	10 00
Furniture for hotel	107 00
Proceeds of bonus bonds.....	6,900 00
Back salary of J. D. B.....	2,500 00
	$15,466 00

Endorsed: Filed June 3, 1889. Ralph L. Goodrich, clerk.

It is hereby agreed that the within acc't is a correct copy of the account or statement submitted by counsel to the judge of the court upon the submission of the original cause of Paul F. Beardsley *v.* John D. Beardsley *et al.*, but not marked filed.

JONES & MARTIN,
For Plaintiff.
J. M. MOORE,
For J. D. Beardsley.

695 UNITED STATES OF AMERICA, }
Western Division of the Eastern District of Arkansas. }

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the western division of the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the original remaining of record in my office, and constitute a true copy of the record and of the assignment of errors and of all proceedings in the case of Paul F. Beardsley *v.* John D. Beardsley *et al.* on supplemental bill.

In witness whereof I have hereunto set my hand and the seal of said court this 16th day of June, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States of America the one hundred and fifteenth.

The Seal of the Circuit Court, U. S. A., Western Division of East. Dist. Ark.

Attest: RALPH L. GOODRICH, *Clerk.*

Cost transcript, $136.25.

Endorsed on cover: Case No. 14,697. E. Arkansas C. C. U. S. No. 199. John D. Beardsley, appellant, *vs.* The Arkansas & Louisiana Railway Company. Filed June 22, 1891.

158-123

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

THE LAW ...
PHILADELPHIA

JOHN D. BEARDSLEY, Appellant,

vs.

THE ARKANSAS AND LOUISIANA RAILWAY COMPANY.

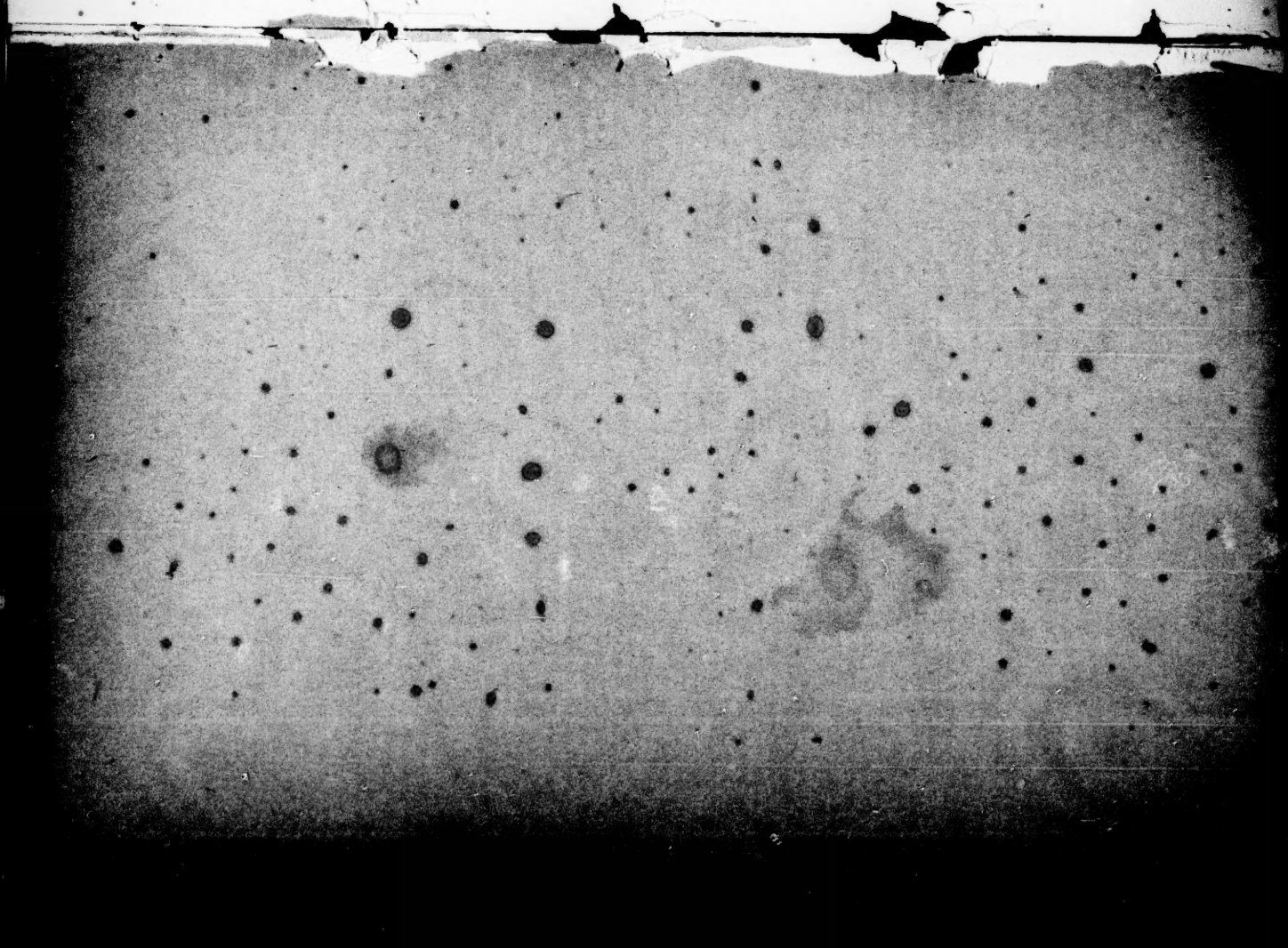
No. 199.

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

BRIEF FOR APPELLANT.

JOHN M. MOORE,
A. H. GARLAND,
For Appellant.

McGILL & WALLACE, Law Printers, Washington, D. C.



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BRIEF FOR APPELLANT.

A formal and decorous introduction of this case to the Court requires attention to be first called to the *Beardsley Case, 138 U. S., 262*, to which this is vaguely claimed to be supplemental. But the court, it is believed, in its investigation of the Record, will hardly be able to tell which is original and which is supplemental, not unlike the person Macauley, in his article on the Earl of Chatham, speaks of, who witnessed a long and tedious fight between a man and a snake, struggling and twisting and intertwining so much with each other, until they assumed each other's shape to such an extent, he could not distinguish the man from the snake, nor the snake from the man.

The charges and allegations in this bill claimed as supplemental (Rec., 1–15,) will not be here noticed, but enough of them will be, in an after part of this brief, to acquaint the court with what is in issue.

The appellant moved to strike the bill from the files, and to dismiss it for want of jurisdiction, and demurred to it (Rec., 15–29), all of which were overruled, and he answered in full (Rec., 29–33), and other parties answered, and after several replications, withdrawal of some of them, and amendments to the supplemental bill, the case came to hearing on the pleadings, depositions, and master's report, and decree was rendered against John D. Beardsley for an exorbitant amount in money and in lands. (Rec., 156–9.)

John D. Beardsley appealed from this decree and filed an assignment of errors. (Rec., 159–162). This assignment claims the court erred as follows:

In overruling defendant's demurrer to the bill filed herein by the complainant.

In overruling defendant's motion to strike said bill from the files of the court, because the same was filed without leave of the court first had and obtained.

In overruling defendant's motion to dismiss complainant's bill for want of jurisdiction.

In entertaining jurisdiction of said cause.

In entertaining and taking jurisdiction of the original bill filed in this cause as supplemental to a prior proceeding between the complainant and this defendant.

In entertaining jurisdiction of the original bill filed in this cause and the amendments thereto as supplemental to a prior proceeding between the complainant and this defendant.

In the decree entered on the 25th day of July, 1889, referring said cause to the master in chancery to take an account between this defendant and the Arkansas and Louisiana Railway Company.

In permitting the complainant to file said bill and maintain said action as a stockholder of the Arkansas and Louisiana Railway Company.

In decreeing said defendant to be a trustee for the Arkansas and Louisiana Railway Company as to the lands mentioned and described in said decree, and in decreeing that he convey the same to the railway company.

In overruling defendant's exceptions to the report of the master, C. B. Moore, to the extent that the same were by the court overruled, and in approving said report and charging defendant with the several items and amounts therein charged against him by the master to the extent that the same was by the court approved and said items and accounts were charged against him.

In decreeing against defendant and in favor of the Arkansas and Louisiana Railway Company the sum of $21,072.16, with interest thereon from the 5th day of August, 1889, or any part thereof.

In ruling and holding that the defendant was liable to the Arkansas and Louisiana Railway Company for the several allowances and payments made by said company to defendant under the resolutions adopted by the directors of said company on the 26th day of March, 1887.

In decreeing that the defendant, Jay Gould, upon the payment by the plaintiff to this defendant of the amount "adjudged on original bill to be due him," deliver or cause to be delivered to the plaintiff certificates for seventeen hundred shares of the stock of the Arkansas and Louisiana Railway Company of the face value of one hundred dollars each.

In decreeing that upon the payment by the Arkansas and Louisiana Railway Company of its debt to the defendant, The St. Louis, Iron Mountain and Southern Railway Company, for which certain of the bonds of the Arkansas and Louisiana Railway Company are held in

pledge, as per the settlement contract between said companies of June 11, 1885, and upon the payment by complainant of his indebtedness to the defendant, this defendant and the Arkansas and Louisiana Railway Company, the St. Louis, Iron Mountain and Southern Railway Company, and Jay Gould and their trustees deliver to the complainant eighty of the two hundred and forty first mortgage bonds held by the St. Louis, Iron Mountain and Southern Railway Company or its trustee, R. S. Hayes, as collateral security for the debt due from the Arkansas and Louisiana Railway Company to the St. Louis, Iron Mountain and Southern Railway Company, and that the Arkansas and Louisiana Railway Company, after such payments, cause forty-eight of the one hundred and forty-four of the uncertified bonds of said company to be duly certified, and deliver the same to the plaintiff.

In enjoining and restraining this defendant and his co-defendants from carrying out the terms and conditions of the agreement of March 7, 1887, between this defendant and his co-defendant, Jay Gould.

In permitting the complainant to file an amendment to his bill under leave granted by order of the court entered on the 23d day of July, 1888, and in permitting him to withdraw his replications and file an amendment to his said bill under the order of the court, entered on the 23d of March, 1889.

In permitting the complainant to join in one action, several distinct and independent matters which could not be united in one action, and the joinder of which rendered his bill in this cause multifarious.

These will not be taken up in their order, but each will appear as the argument progresses in a different connection, but in such manner as to present the substance of the whole case to the court.

Naturally enough in this appeal comes to the front, to be first considered, the practice touching supplemental

bills and the proceedings under them, as this was the first matter brought forth below after the filing of this so-called supplemental bill, and it is the first suggested in the assignment of errors.

With much propriety *Gilbert's Forum Romanum* is called by some "a chief fountain of equity pleading and practice," and in view of the fact that rule 57 of this court was not observed and recognized by the court below, but utterly ignored, we propose to step back to that fountain and to some others, to see if that rule can not be bolstered up somewhat, and to see if, with or without this rule, chancery practice in England, which the United States courts are expected to follow, in the main (Vattier *v.* Hinde, 7 Peters, 252; Wheeling Bridge Case, 13 How., 518; Spear Fed. Judic., 752, *et seq.*), did not require leave of the court first before filing a supplemental bill.

Gilbert's book (*sup.*), published first in 1756, after stating the practice under the civil law when replication is entered, says: "But if any new matter was discovered after the replication, they might, by *leave of the court*, file a supplemental bill, touching any matter of fact that was discovered after such replication; for the supplemental bill was in the nature of a new case which might be brought, *by leave of the court*, after *contestatio litis* in the former cause, and the court might lengthen the time of publication," &c., &c. (See Tyler's Edn., 1874, p. 107.) The point as to this proceeding after replication will be fully noticed, as touching this case hereinafter.

Mitford Eq. Pl. and Pr. (*Tyler's Ed., 1890*), a work published first in 1782, and to this day a standard authority, says: "A bill of review upon the discovery of new matter, and a *supplemental bill* of the same nature being exhibited *only by leave of the court*, the ground of the bill is generally well considered before it is brought, and therefore in point of substance it can rarely be liable to a demurrer." (*P. 299.*) In several previous portions of

the book he speaks of the permission of the court, how, and when given for the filing of these bills, whether of the one nature or the other. (*Ib., 159–166; 172, 180.*) As stated by the author, they are rarely subject to demurrer for substance after filed, and for the reason, when leave to file it is asked, it is supposed the court considers the matter as on demurrer. Here appellant was bound to resort to the mode he did to get rid of this bill, and as it was filed without notice to him, or without previous request to the court, and without its leave. (Bainbrigge *v.* Baddeley, 10 Jur., 765; S. C., 9 Beav., 538; Cole *v.* Gibson, 1 Ves. Sr., 504; Hodson *v.* Hall, 1 Phil., 19 Eng. Ch., 177.)

1 Harrison Ch. Pr., p. 123 (1793, 1 Am. edn.), says "When new matter happens pending the suit and after replication, or that the cause is at issue, which matter it is necessary for the plaintiff to set forth to the court, *he may have leave to file a supplemental bill.*"

Barton's suit in equity (p. 128 *et seq.*, 1796), in an edition in 1870 by James P. Holcombe, of Virginia, a scholar and lawyer of first degree, states the rule as the foregoing authorities do, and then discusses the application of the rule to cases.

Cooper Eq. Pls. (*1807, pp. 73–77,*) speaks of the necessity of first *getting leave of the court* to file a supplemental bill, and discusses the question elaborately when the court should and when it should not grant this request.

Lubé Eq. Pls., 136 et seq. (the book of books on equity pleadings, 1823,) states the rule in the same way, and reference is made to cases, English and American, on the subject, with approval, and especially to *Partridge* v. *Osborne, 5 Russ., 195.* (*5 Eng. Ch. R.*) Allusion to the American cases cited in Lubé will be withheld till we come back here from our search "across the waters."

In Maddock's Chancery (published in 1837), a book upon which Spence's grand work on Equity Jurisdiction

is in great part moulded (2 vol., 4 Am. edn., *518 et seq.*), this same rule is broadly announced, and in support of it an order is given, as coming from Lord Hardwicke, *Anon*, 11 October, 1741. This rule or order antedates by many years even Gilbert's Forum Romanum, as the court will observe, and Beames' book—orders in chancery—published in 1815, pages 366–7–8, has the same, and it has preserved its integrity down to this day in courts where real chancery practice is even claimed or attempted to be followed.

Spence Eq. Juris., already referred to above (*2 vol., p. 953, additional note III*), agrees to the same view, and cites cases in support of it.

Not exactly in the order of time, but nearly so, we cite *3 Dan. Ch. Pr., 1665, et seq.* This work appeared about the same time Maddock's Chancery did, and it has received the general approval of the bar, and the courts of equity here and in England. It discusses at length this question, and leaves it just where those before him placed it, and, at times, with more positiveness, if possible, than some others. He cites authorities from England, and in the notes by Perkins there is a wealth of them in this country, in direct support of our position here, and some of these will be particularly noticed as we progress.

Adams Eq. (*7th Am. Ed.*) *408–415–417*, a standard work rendered in lectures in 1842–5, recognizes the same doctrine, or rather takes it for granted in citing cases, English and American, announcing this as a fixed or unbending rule, and especially referring to *Hodson* v. *Ball*, *1 Phil. Ch., 177–81* (*supra*).

After this somewhat protracted visit to "the Mother Country" we get back on our own native shore, with feelings mingled with regret and pleasure—pleasure because we have had an agreeable sojourn abroad, and while we have not seen all our friends in this behalf, we have paid our respects to as many as we well could, and

also for the reason they were and are all we could wish, and for the reason we will be as well if not better entertained here at home than there, and for the reason there we find that the doctrine of this rule 57 of this court is fully supported by all sorts of authority, before and after its adoption—with regret, however, that a necessity, inexorable it seems, compels us to vex and torture this court with matters so old and so thoroughly imbedded in the very body and existence of equity practice, that until now there has been none to dispute. The cases in England cited and approved by those text books are numerous, but we will not discuss them, for this court will find them in and to the point. But before leaving altogether this rich field, we must beg the court to gaze intently on *Hodson* v. *Ball*, 1 Phil. (9 Eng. Ch. R.), 177, *sup.*, and the cases cited.

In 1834–5 Murray Hoffman, Esquire, of New York, issued a treatise upon the practice of the Court of Chancery, dedicating it to the great chancellor, Reuben H. Walworth, and it has stood the test and is held by the profession in high esteem as authority. He says (1 Hoff. C. Pr., 393–403), speaking of *Supplemental Bill*: "Leave to file a supplemental bill *must be obtained* from the court, which will be granted on an *ex parte* application; if there is probable cause for filing it, leave will be given, of course, and the court only examines the question so far as to see that the privilege is not abused, for the purpose of *delay and vexation* to the defendant, and in a case of a doubt, the court will direct notice of the application to be given," and, after referring to certain cases of injunction, he says: "The practice would be most safe to apply for liberty in all cases," and then proceeds to state how this application is made; and in No. 135, Appendix, Vol. 3, is given a neat and pleasing form in which to make this request. How much better it would have been, and especially how much more in accord with sound equity

practice it would have been, to have the so-called supplemental bill here put in such a frame as that given in Vol. 3?

In 1838 Mr. Justice Story put out his work on *Equity Pleadings*, following his book on Equity Jurisprudence. Speaking on this subject he says, "leave must be asked when the supplemental bill seeks to change the original structure of the original bill and to introduce a new and different case" (which is this effort if it is anything) (§ 333, 10 Edn. by Gould). In note 5 to this section reference is made to English authors and decisions, of which we have already made great use, and the whole in review leaves not a particle of this question to debate. And in note *a* to the same section it is said, "Usually a supplemental bill can not be filed without leave of the court," and there follow citations of leading cases; and strange to say this rule (57) is noted. The court below might insist possibly this was a lapse of language or pen, if it were not followed by several cases from federal tribunals, which see.

After a while, we will try to find out in what respect this pleading fails to come under the usual rule; or why it was entitled to exemption from the operation of this old and wholesome usage in equity practice.

Barbour's Chancery Practice, issued in 1843, is more emphatic on this point even than Hoffman. After stating the nature, object, and purposes of a supplemental bill, he says, "a supplemental bill can not be filed without special leave of the court first obtained; application should be made by petition founded upon affidavit, and served upon the other party with usual notice of presenting the same." *1 Barb. Ch. Pr.* (*2 Rev. Edn.*), *362–4;* and refers to cases.

This would seem to be the fair and proper view of the matter, as it is supposed in these proceedings the courts are trying to do justice—equity. There seems to be

some variance between the authorities as to notice before presenting the application to file the bill, but here this matters not, as no application to file was made in any shape.

Barton's Ch. Pr., well fashioned after Daniell's Chancery Practice (Winchester, Va., 1881), follows Daniell as cited, *sup.*, on this subject, and speaks several times of when and how the party will be *allowed* to file such a bill, thus plainly indicating he must be allowed by the court on his request for leave. (1 Vol., 329.)

It is likely we have produced writers enough to establish an almost self-evident proposition, as to the rule of chancery practice in our States, and we must slight many others, but not intentionally. And the rule as sanctioned in the reports by such men as Shaw, Walworth, Kent, Parker, Collier, and Redfield is this and nothing more, nothing less:

A supplemental bill introducing new facts relating to the merits, might not be filed, as a matter of course, but only by leave of the court, upon sufficient cause shown.

Pedrick v. *White, 1 Met.* (*Mass.*), *76;*
Lawrence v. *Bolton, 3 Ib., 294;*
Thorn v. *Gormand, 4 John. C., 363;*
Tappan v. *Evans, 12 N. Hamp., 330;*
Busie v. *Winter, 2 Ala., 406;*
Blaisdill v. *Stevens, 16 Vt., 179–186.*

We have traveled somewhat over the "old country," and to some extent over the States, and given the court the result of our labors. Now, a few words on authority as to the practice in the federal courts, in addition to to those cited above:

Spear's Fed. Judic., 760, speaks of a supplemental bill being allowed to be filed under the English practice, which he seemed to believe, with some others, is the

mode and manner in the federal tribunals. (752 *et seq.*) Of course, *allowed* means *allowed* by the court, as no one else could allow it, and it means and carries with it, necessarily, a request to be *allowed* to file, &c., and he cites *Adam's Eq.*, as we have done already. Spear also has the boldness to refer to and print rule 57 of this court (page 778) as regulating this matter. Now, to the rule itself, and as it is important in this inquiry in several respects, it is here inserted in full:

Rule 57.

Whenever any suit in equity shall become defective from any event happening after the filing of the bill (as, for example, by change of interest in the parties), or for any other reason a supplemental bill, or a bill in the nature of a supplemental bill, may be necessary to be filed in the cause, leave to file the same may be granted by any judge of the court on any rule day upon proper cause shown and due notice to the other party. And if leave is granted to file such supplemental bill, the defendant shall demur, plead, or answer thereto on the next succeeding rule day after the supplemental bill is filed in the clerk's office unless some other time shall be assigned by a judge of the court.

This rule, now over a half century old (adopted March 2, 1842, 1 How., LIX, LXX), makes two things plain: 1st. Application must be made to the court for leave to file the supplement, upon which there is no dispute among text-writers or judges. 2d. That notice must be given to the other side of such application, about which there was and is some difference among the authorities. But this rule should have been a law unto the court below in this case, as Congress had, as early as May 8, 1792, given this court authority to make rules and regulations for equity practice in the Circuit and District Courts of the United States (R. S., 917), and this authority had been from time to time enlarged as occasion might re-

quire. (*5 Stat., p. 518, sect. 6.*) This delegation of power, after several hard struggles, has been held Constitutional, and the rules and regulations made under it have been declared as operative and binding upon those courts as positive statutes.

Wayman v. *Southard, 10 Wh., 43;*
Poultney v. *Lafayette, 12 Pet., 472;*
Ex parte Whitney, 13 Ib., 404;
The Steamer St. Lawrence, 1 Bl., 522;
Noonan v. *Lee, 2 Ib., 499.*

That the court below should have entirely ignored this rule may not be surprising, as we know sometimes inferior courts feel their independence and do indulge in self-assertion, and require to be prohibited, mandamussed and otherwise brought to obedience by this court. This may have been an instance of that feeling and we will so regard it, as the Record is silent as to any reason for it. But that the court below should fly in the face of all that vast array of authority, before and since the adoption of such rule, obtaining in real good old English equity practice, but all in accord with such rule, is something for which there is no reason given and none can be, and we will have to wait for one till the coming of that Great Day when it is said all things will be uncovered and made known. But for the purposes of the present, and leaving that Day to take care of itself, this alleged supplemental bill should have been stricken from the files, as there was neither leave asked, nor any notice given, as the law required, and not doing this the court erred most grievously, and that error is directly noted in the Record, complained of and assigned, and so the court had no jurisdiction of the case, as appellant there insisted and now insists.

But let us see further, why this bill should have been stricken from the files! This bill purports to be a sup-

plemental bill to the bill in the first suit as between the two Beardsleys. (138 U. S., *sup.*)

Rule 57 contemplates, in its very language, some defect, in some way, in the original suit to authorize a supplemental bill to be filed. In other words, it should be intended to supply something in another suit. In the many definitions of the term probably there is none better than that given by Hoffman, which is, "The province of a supplemental bill is to bring before the court material matters which have occurred since the original bill was filed and before hearing; or matters which existed previously (at least for the purpose of a further discovery), when the cause is in that stage in which it can not be done by amendment, or, in a similar state of the cause, to add parties; or to remedy a defect in the prayer of the original bill." (1 Hoff., *sup.*, 393.)

Lord Hardwicke, in *Jones* v. *Jones, 3 Atk., 217*, limited the time in which it could be filed, previous to the hearing, &c., but we waive this and even admit that in certain cases it is allowed after decree and entry thereof, but the cases to justify this must be strong and urgent, and present a most conclusive showing for the purpose of doing justice.

Here, however, when this supplemental bill, so called, was filed (October 22, 1887), the intended original bill was, with all the pleadings to and under it, on the docket of this court, on J. D. Beardsley's appeal, and that appeal was not disposed of until some few months before the appeal in this case was lodged here. *Quaere.* What was there in the court below to *supply;* what original bill was there in that court to supplement? For aught any one knew, that original case might have been reversed and nothing left of it, and if so, the foundation of this proceeding would have gone to pieces. The whole matter had gone out of that court, under that general, almost universal, rule, that where a cause is transferred to the

appellate court by writ of error or appeal, the jurisdiction of the court below is superseded, and does not attach again until the cause is remanded for further proceedings.

Goddard v. *Ordway, 94 U. S., 672;*
Draper v. *Davis, 102 Ib., 370;*
Thomas v. *Sullivan, 11 Nev., 280;*
Spears v. *Matthews, 66 N. Y., 127;*
Whaley v. *Charleston, 8 S. Car., 344;*
State v. *Clark, 33 La. Ann., 422;*
Skinner v. *Bland, 87 N. Car., 168;*
Parson v. *Swieburger, 90 Ib., 159;*
Western, &c., v. *State, 69 Ga., 524;*
Stewart v. *Taylor, 68 Cal., 5.*

So that, there was nothing within the jurisdiction of that court, to which this could be made an *annex* under any special name or title that might be given to this attempted *annex*. It is not permitted that a party shall litigate the same matter in two courts at the same time. There is to be found scarcely an exception to this rule, outside of some mere clerical acts as to matters of form, unless possibly the case of *Rector* v. *Lipscomb, 141 U. S., 557*, may be one; and, strange to say, a singular coincidence it is, that case came from the same temple of justice this does. But it is submitted, with unbounded respect for all concerned, the *Lipscomb* case does not "stand out as a bright star in a dark horizon," but more as the sweet singer of Israel would say, "like a pelican of the wilderness—like an owl of the desert."

It is without doubt exceptional, and it would seem certain, it will form no precedent ever in any future litigation.

Then supposing the causes of complaint in this alleged supplemental bill are true, the complainant was not without remedy in a proper and legal form, but this was

not it. Error could have been confessed in the appeal in *138 U. S., sup.*, and when the case returned to the jurisdiction of the lower court a new suit involving all proper matters could have been brought; or he could have waited for the result in *138 U. S.* and then brought a new suit, or have supplemented in proper form, according to the manner of disposing of that case by this court, and no limitation could have shut him out. One of these courses was open to him, but he could not supplement a suit in a court where there was no suit, in fact or in law, pending, and the authorities cited above on the practice of filing these supplemental bills announce the one or the other course here referred to as being proper. These authorities will not be again stated here, but some of them will be, after a while, when we come to examine if this is in truth a bill supplemental.

It must be evident that the court below went astray, wildly so, in taking hold of this case at all, and whether the judge there supposed he stood on some truth of law deduced by construction, perhaps, or by illation, in taking jurisdiction, we know not, for the Record is mute, quite so, on this point. The bill, so-called supplemental, should have been taken from the files *as a novelty*, as Lord Eldon expressed it in *Perry* v. *Phelips, 17 Ves., 173.*

Appellant demurred to this *novelty* as not being a bill supplemental to the original bill. By the authorities above cited ordinarily a demurrer is not used to test the sufficiency of a supplemental bill, as that question is supposed to be passed on whenever leave to file it is asked and notice given to the opposite party; but here, as very eroneously there was no leave asked and no notice given, a demurrer was necessary in order to examine into the sufficiency of the bill; and that brings us to the question: What defect is there in the original bill to be remedied, or what newly-discovered interest is there, growing out of or connected with the original suit to be protected, are

asserted in this supplemental bill so called? (See Rule 57; 1 Hoff., Ch. Pr., 393, *sup.*)

To simplify this inquiry it may be as well to state what is charged in this supplemental bill, as well as the facts brought out upon it and the pleadings under it; and this will embody the argument upon the merits.

The complaint charges that in March, 1887, the Board of Directors of the Arkansas and Louisiana Railway Company, in violation of the decree rendered in the original cause, directed the payment to John D. Beardsley of more than $16,000 on account of matters which had been adjudicated and determined by this court in the original action.

It is possible, though there is nothing positive in the Record to show it, the bill was entertained and sustained on the ground that the action of J. D. Beardsley and the directors was in violation of the original decree. But this original decree was not there, but here, and that court, as we have seen, had no more, "until further orders," to do with it; and if it did have it could have enforced that decree by other means, but not by this course. (*Authorities sup.*)

The object of that bill, so far as we can ascertain, was to enforce the performance of the alleged agreement of John D. Beardsley to transfer one-third of the stock of the Washington and Hope Railway Company to Paul F. Beardsley, and to compel him to account in the settlement with Paul F. Beardsley for money and property of the company which had been used by him, for the purpose of ascertaining the balance due by Paul F. Beardsley on the stock purchased by him, after giving him credit for one-third of the amount of money and property of the company that had been used by John D. Beardsley. There was no allegation in the original bill touching the matters in controversy in the so-called supplemental bill. This overthrows the supplemental bill

utterly. (*Citations sup.; Milner* v. *Lord Harewood, 17 Ves., 144, and notes.*) The following are the only allegations affecting John D. Beardsley's transactions as between himself and the company: It was charged that he had paid $4,800 on the indebtedness to Alderman for the stock bought of him out of the funds of the company (Rec., 174); that $4,732.50 derived from the sale of scrap iron, cars, and old iron of the Washington and Hope Railway Company had been credited to John D. Beardsley and drawn by him from the company (Rec., 174); that John D. Beardsley had used the means of the company in erecting a residence at Washington during the year 1884 (Rec., 174–5). These are all the material allegations in regard to the state of account between John D. Beardsley and the company, and they were made for the purpose of requiring him to account for Paul F. Beardsley's alleged interest in the funds of the company thus appropriated by John D. Beardsley. It is also charged that certain lands upon which the town of Nashville is located, and which are described in the bill (Rec., 176), had been conveyed to and were held in trust by John D. Beardsley for the company. The prayer asks that an account be taken and stated by a master of all the property of the railway company, and that Paul F. Beardsley be decreed a tenant in common with John D. Beardsley, in the railway and all its property; that one-third of the stock and one-third of the bonds of the company be issued and delivered to Paul F. Beardsley; that John D. Beardsley be required to account for all money and property of the company which had been applied by him to his own purposes, and be decreed to hold all the property purchased by or given him by the railway, as set forth in the bill, as trustee, and to account for such parts thereof as he may have converted to his own use; and that the credit of $4,732.50 in favor of John D. Beardsley on the books of the company, derived

from the sale of iron, etc., be cancelled and charged back to him and placed to the credit of the railway company. (Rec., 178–9).

The court found and decreed that Paul F. Beardsley was the equitable owner of one-third of the stock and bonds; that John D. Beardsley held the legal title to the Nashville lands in trust for the railway company, also a contract with the Pan-Electric Telephone Company, and perpetually enjoined John D. Beardsley from conveying or disposing of any of the property decreed to belong either to the complainant or the railway company. (Rec., 274.)

An order of reference to a master to state the account between John D. Beardsley and Paul F. Beardsley was entered after the decree fixing the rights of the parties had been rendered. This order directed the master to fix the amount due by Paul F. Beardsley to John D. Beardsley for the purchase money of the stock, after allowing Paul all credits to which he might be entitled for payments made to John D. Beardsley, and for money received by John D. Beardsley from the sale of property of the company or otherwise, with which he should be charged. (Rec., 287.) In pursuance of this order of reference, the master, in stating the account, charged John D. Beardsley with one-third of the old material, amounting to $1,500, and with $1,600, being one-third of the amount of the funds of the company used by him in building a residence, and interest on said sums. (See Master's Report, R., 288–290.)

The master declined to hear testimony or to consider any claims of John D. Beardsley against the railway company for indebtedness due him from the company. (Rec., 291.)

The items included in the allowances made by the board of directors to John D. Beardsley on March 26th, 1887, were as follows: $9,696.67 for the proceeds of notes which John D. Beardsley acquired under his contract

with the Washington and Hope Railway, and in which Paul F. Beardsley, nor any one beside John D. Beardsley, had any interest. (See contract with Washington and Hope Railway, Rec., 193; deposition of John D. Beardsley, Rec., 64.) No one has ever denied that the proceeds of these notes were received and used by the railway company, $2,500 and interest for salary due John D. Beardsley from Washington and Hope Railway Company for two years ending September, 1882, and $600 for salary due from Arkansas and Louisiana Railway Company from September 1st to December 1st, 1883. These items, with interest, amount to $3,897, and are embraced in voucher 1324½, referred to in the report of C. B. Moore, special master in this case (Rec., 150); $2,400 for salary to John D. Beardsley from the Arkansas and Louisiana Railway Company, from August, 1866, to April, 1887 (subsequent to the rendition of the decree), and $277 for furniture, material, etc., of John D. Beardsley which had been taken and used by the company. Not one of these items was embraced in the pleadings or in the report of the master in the original proceeding. An account was handed to Judge Caldwell, the last two items of which embraced a part of the bonus notes and of the back salary of Major Beardsley, but this account was not considered by the court or by the master. There was no question in that case as to any indebtedness owing by the company to John D. Beardsley. The only object of taking an account as between John D. Beardsley and the railway company, was in order that he might be charged in his settlement with Paul F. Beardsley with one-third of what he had received from the company, upon the theory that Paul F. Beardsley being the owner of one-third of the stock, was entitled to one-third of the money and property received by John D. Beardsley, and should have credit therefor in the settlement between them. It was in reality a settlement between John D.

and Paul F. Beardsley, and not a settlement between John D. Beardsley and the railway company. There was no issue in the case or in the nature of the case upon which John D. Beardsley could have been allowed, in the settlement with Paul, for any indebtedness due him from the company. No such claim was made or set up by John D. Beardsley in his answer. A history of these allowances will be found in a resolution of the directors on pages 25 and 27 of the Record, which is made a part of the affidavit filed by the directors, and which it was agreed might be used as the deposition of these parties. (See agreement, Rec., 142; and also in the deposition of John D. Beardsley at pages, Rec., 49 and 56.)

Mr. Moore, in his report as master, practically admits that the notes were originally intended as a bonus to John D. Beardsley, but that they did not become his private property because they went into a fund for the building of the road, and he comes to the singular conclusion that John D. Beardsley got his proportionate share of their value, as owner of the stock, and that to pay him back what the company owed him would be paying him a second time for the same thing. If this doctrine is true it would not be safe for stockholders to lend corporations money. He (the master) also says this will apply to each of the other items. (See report, Rec., 150.)

The other items charged to John D. Beardsley, by Master Moore, will be found on page 154 of the Record, in Exhibits "B" and "C" to his report. They consist of the price of a narrow-guage engine, $1,650, and of various items of money expended by John D. Beardsley in traveling on the business of the railway company. Some reductions in these allowances were made. (Rec., 157.) There is absolutely no evidence in the Record to warrant the master in charging these expense vouchers included in Exhibit "B" to his report to John D. Beards-

ley. John D. Beardsley is the only person who knew what the expenditure was for, and he explains it in his deposition referred to above, and the only conflicting testimony was that of Paul Beardsley, whose statements show that he knew nothing about it, and was only testifying from mere suspicions and inferences. The onus here was on Paul F., and as between his statement and that of John D., defendant, the latter must prevail; and if the judge below, even after his decree, had consulted the pillow, that best of oracles, as grand old Dr. Holmes so wisely termed it, he must have been abashed at that feature of the case.

As to the price of a narrow-guage engine charged in Exhibit "C" to the master's report (Rec., 152): This relates to an old narrow-guage engine that was sold to a party by the name of Gunn. John D. Beardsley was away from home at that time. The only evidence in the Record in regard to the transaction is some telegrams which appear (Rec., 107), and the statements of Vanderford in his deposition at pages 71 and 76, Record, which statements were not based on his own knowledge but on hearsay, being a repetition of what had been told him by H. H. Wheliss, the auditor of the railway company. The master admits in his report (Rec., 151,) that John D. Beardsley had testified that he did not know what disposition had been made of the money; and there is no evidence in the Record that he got the money, or that warranted the charge. The charge seems to have been made because John D. Beardsley did not sufficiently disprove it, rather than on any affirmative evidence that the money came to his hands, and somewhat reversing the rule of evidence that a party is not required to prove a negative. The telegrams (Rec., 107), show that he was not at home at the time the transaction occurred.

Attention is called to the fact, that the lands for which

the directors proposed to pay John D. Beardsley in the latter part of the resolution (Rec., 26), were not the same lands which were embraced in the bill in the original case, but were lands which were sold to a man by the name of Gates, living in Iowa, in the year 1884. (See the deposition of John D. Beardsley, Rec., 65). No money was paid John D. Beardsley for these lands and they do not really enter into the controversy.

This is a fair summary of the case as made under the so-called supplemental bill, by pleadings, and proved as facts, as found by the court below upon which the decree was rendered; and particular items entering into it are excepted to by appellant and included in his assignment of errors, *sup.*

It is an unpardonable abuse of language to call this bill a supplement to the original bill, as we have seen what is meant by a supplemental bill, for it brings up matters entirely outside of the original case, and in fact changes altogether the nature and character of that original case. In the various cases heretofore cited, and in the text books as well, close along under the citations we have made, our position as to this is amply sustained; but it is nowhere better illustrated than by decisions of this court.

Snead v. *McCoull, 12 How., 407;*
Minnesota, &c., v. *St. Paul Co., 6 Wall., 742.*

Courts are always careful in allowing such bills to be filed in protecting parties against vexation, costs, and long litigation (*see notes to 17 Ves., sup., 150*), or as some of the authorities cited say against bills without end, "bills for the purpose of delay and vexation to the defendant."

This pleading too is accused of being multifarious as to parties, matters, and interests involved, and relief

asked; and the foregoing analysis of the bill shows, we submit, most conclusively, that matters having no connection proper are joined here, as well as parties having no necessary relation to or with the supposed foundation or origin of the former bill. And in itself, regardless of the first suit, it is highly objectionable in this respect. No one can read it, without seeing at once it is composed of a variety of distinct and independent matters, and this is the test of multifariousness; in fact, it is multifariousness.

Brown v. *Guarantee Co., 128 U. S., 403;*
Gaines v. *Chew, 2 How., 619;*
Sto. Eq. Pl., sec. 271, et seq.;
1 Dan. Ch. Pr., 383-4, note I.

And for this, it was a grievous error in the court below in not rejecting this bill on demurrer, and this is an error hereinabove assigned.

How long, then, is Paul F. to be permitted thus to pursue John D. with all sorts of complaints? Is there to be no end to it? For not more inflamed and undying was Hannibal's wrath against the Romans than is that of Paul F. towards John D.; nor do we pretend to claim, that in this Record, there is the least evidence that John D. yearns from his heart of hearts, to draw Paul F. to his bosom and weep tears of love on his fraternal neck; by no means. And if it is left to Paul F. to amend, supplement, review, and revive John D. at will in this way, he will be at it, in truth, till time to him shall be no more. They should have peace.

Then, too, on the facts as proved from our previous review herein, it is plain the master was in great error in his findings, and the court as well, but not as far as was the master; and the exceptions filed by John D. Beardsley should have been sustained, and the bill supplemental and pleadings under it should have been

dismissed, and it is complained of and assigned as error they were not dismissed on the final hearing.

In presenting the case on demurrer, and on the motion to strike from the files, and on the motion to dismiss, we have possibly run together the reasons and authorities, to some extent, as the lines dividing the questions arising under the three are not clear and distinct. But we are sure we have placed the leading authorities on the three plainly before the court; and it must be apparent, if English equity and English equity practice have not departed this life intestate and without heirs in the descending line, this case, both upon the law and the facts, should be reversed.

Respectfully,

JOHN M. MOORE,
A. H. GARLAND,
For Appellant.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

JOHN D. BEARDSLEY, Appellant,

vs.

THE ARKANSAS AND LOUISIANA RAILWAY COMPANY.

No. 199.

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

BRIEF FOR APPELLEE.

The decree made on the hearing of the original bill in this cause adjudicated that one-third of all the stocks, bonds, assets and property of the Arkansas and Louisiana Railway Company belonged to Paul Beardsley, the complainant, by reason of an executed contract between him and his brother, John D. Beardsley, by which they became practically joint owners of the road, with reservation of title in John D. Beardsley simple as security for the purchase money, and that in so far as John D. Beardsley held

any of such stocks and property as to one third of them he was a holder in trust for said Paul Beardsley. It is necessary to dwell somewhat upon the facts established by this decree as shown by the opinion filed in the court below on the hearing of the original bill, and by that filed in this court upon the affirmance, in order to understand the relations between Paul Beardsley, John D. Beardsley and the Railroad Company. Back as far as 1879 John D. Beardsley had entered into a contract with the Washington and Hope Railway Company to the effect that if he would complete the road the company would transfer to him all the stock and property of the corporation, including a grant of lands made by the State to the company to aid in the construction of its road, and would also give him a bonus of $10,000, represented by certain promissory notes, to be donated by citizens interested in having the road built. (See Rec., p. 279.) One Vinton Alderman had an equal interest in this contract, and two-thirds of Alderman's interest, or one-third of the whole, passed to Paul Beardsley under the executed agreement between him and his brother, John D. This interest was not a mere interest in the stock; it was an interest in the enterprise, in the lands, in the bonus notes, and in all the resources upon which the road could rely, and in the gifts and promises made by those interested in the road's completion. To the Washington and Hope Railway Company succeeded the Arkansas and Indian Territory Railway Company, and to this latter the Arkansas and Louisiana Railway Company. But these were practically only new names for the one corporation, and the joint ownership and interest of the Beardsleys remained as before. A construction contract was entered into in 1883 between John D. Beardsley and the Arkansas and Louisiana R. R. Co. as a convenient mode of providing for the extension of said road, and said Beardsley was to receive certain bonds and stock for each mile built under this last contract; but in this he represented his brother Paul as well as himself, and took one-third of what he received as trustee

for said brother. (See opinion Caldwell, J., Rec., pp. 278 *et seq.*) The artificial person, the Arkansas and Louisiana R. R. Co., was practically composed of the two natural persons, John D. Beardsley and his brother Paul, as joint owners of the road. As this court, in its opinion in 138 U. S., *infra.*, says, "the Circuit Court was right when it adjudged that the relationship between the brothers was not that of mere stockholders in a corporation, but that of joint owners in a common enterprise, the profits and losses of which were to be shared between them in the proportion of their respective interests."

These facts are *res adjudicatæ*.

As a consequence of this adjudication, and to effectuate it, the Court ordered, among other things, that John D. Beardsley convey to the said railway company the lands described in the bill, and deliver and convey to Paul Beardsley one-third of the stock and bonds of said company, the legal title to which stood in the name of John D. Beardsley, for in this way, both directly and through the company, Paul Beardsley was to come into his own. This decree was affirmed by this Court on Appeal.

See *Beardsley* v. *Beardsley*, 138 U. S. 262.

Not long after the decree on said bill was rendered by the Court below, John D. Beardsley began a series of attempts to deplete the treasury of the said company, as a means of acquiring its property for his own use, and for the evident purpose of wresting from Paul Beardsley what had been solemnly adjudicated to be his by a Court of equity, and to rob him of the results of the successful litigation of his rights.

These attempts were only too successful in the first instance, for the complacent board of directors were the creatures of the will of John D. and entirely under his control. As the Court below, in its opinion, says: "His (John D.'s) control of the corporation and its property was absolute. The directory did not direct and control him; he made, directed and controlled the directory."

See *Rec., p.* 282.

Paul B., seeing that the decree rendered in his favor in the Circuit Court was thus being nullified, filed his supplemental bill for the purpose, among other things, of preventing John D. from further depleting the treasury of said company, and increasing its indebtedness, and to compel said John D. to restore to said company the moneys that he had, in prejudice of the rights of said company and of Paul, wrongfully applied, or caused to be applied, to his own use in wanton disregard of the findings and adjudications on the hearing of the original bill. A decree in favor of said Paul Beardsley and of the railway company was entered in the Court below on the said supplemental bill, and from it the said John D. has appealed to this Court.

We will now consider those assignments of error that are based upon mere technical and formal grounds.

The appellant has devoted more than a fourth of his brief to show that a supplemental bill cannot be filed without leave of the Court. Nothing but the consciousness that he must make the most of the few straws to which he has to cling could ever have caused appellant to have clutched so desperately to this frail support. He has given an elaborate collation from

the text books, both American and English, and has said over to himself so often and in such a variety of phrase, "A supplemental bill cannot be filed without leave of the Court," that we fear the words have become a mere jingle to him, and that he has missed their significance; unless, indeed, as we half suspect from the gleams of humor that here and there shine from his pages, he is not altogether serious in his application of them in this case.

The meaning of the rule, of course, is that the filing of a supplemental bill is not a matter of right, but rests in the sound discretion of the Court, and if leave of the Court is not first obtained, the bill may be dismissed; but it is for the Court to assert its prerogative in this respect, and if it refuses on motion to dismiss the bill for such a reason, it intimates clearly that the bill is filed, or stays filed with its leave, and this matter of discretion is not subject to review.

Question of practice and the manner in which the Court below has administered or relaxed rules of procedure resting in its discretion will not in general be revised; the Court has an adherent right so to do to work equity.

Eberly v. *Moore*, 24 *U. S.* 147.

But even if the Court were inclined to resent the filing of a supplemental bill without its leave, it is to be remembered that a supplemental bill may, under certain circumstances, be filed without leave as required by the fifty-seventh equity rule.

See *Mackintosh* v. *Flint*, & *P.* M. *R. Co.*
34 *Fed. Rep.*, 582, 605.

And under the general equity practice the Court will, sometimes, even when a party has not the right to file a supplemenal bill, *ex mero motu*, direct such a bill to be filed if, upon the hearing, the justice of the case, in its own opinion, requires it to be done.

Mutter v. *Chanvel*, 5 *Russ*, 42.

All of which tends to show that the rule is not an inflexible one, but can be moulded to work substantial equity, and that the filing of a supplemental bill is ordinarily within the discretion of the Court.

Turner v. *Berry*, 3 *Gilman*, 541.

Poultney v. *City of La Fayette*, 12 *Pet.*, 472.

There is nothing on the record, however, to show that the supplemental bill was filed without leave of the Court, except that it appears that the appellant moved to strike the bill from the files, alleging the want of leave for a reason; against that, however, we have the positive allegations in the order appointing the receiver that said bill was filed *by leave* of the Court. (Rec. p. 21). And the said motion was therefore overruled presumably because the alleged ground of the motion did not exist, for all presumptions must be in favor of the correctness of the ruling of the Court.

We are told that the Court below erred in overruling the general demurrer to the bill, and in answer we intend to retaliate and show appellant that equity rule 31 looks quite as formidable in italics as does rule 57 with which he sought to terrify us.

RULE 31.

No demurrer or plea shall be allowed to be filed to any bill unless upon a certificate, of counsel, that in his opinion, it is well founded in point of law and supported by the affidavit of the defendant that it is not interposed for delay.

A demurrer is fatally defective and may be entirely disregarded when it lacks the affidavit of the defendant and the certificate of counsel regarded by equity rule 31.

Sheffield Furnace Co., v. *Witherow*, 149 *U. S.*, 574.

No affidavit nor certificate accompanies the demurrer herein and we must presume that the Court overruled it on this ground if for no other. But even if this demurrer had possessed these essential attachments and had been on the ground that the bill had not been properly supplemented, it could not have been sustained.

Consider once more the adjudicated facts that Paul Beardsley had a one-third interest in the whole enterprize and undertaking from the original contract made in 1879 with the Washington and Hope R. R. Co. to and including the construction contract of 1883, with the lands and bonus notes conveyed and given as promised, and then consider the allegations of the supplemental bill that the appellant had since the first decree caused the proceeds of these notes to be paid to him out of the treasury of the R. R. Co. and had entered into agreements and otherwise behaved so as to deplete the treasury of said road and to burden it with debt, and to jeopardize Paul Beardsley's interest as determed by said decree and otherwise render said decree nugatory as to him. Could the court below. under such circumstances or can this court, say otherwise than that these allegations are all sufficient to sustain a supplemental bill.

A suppiemental bill is especially required and allowed when it is rendered necessary by a defendant attempting to further carry out a fraudulent design after filing of original bill.

Allen v. *Taylor*, 2 *Gr. Ch.*, 435.

And even relief may be given by a supplemental bill different from that which was prayed by the original bill where it proceeds upon circumstances arising out of subsequent dealings with the subject matter of the original suit.

Malcolm v. *Scott*, 3 *Hare*, 39.
Candler v. *Petit*, 1 *Paige*, 168.

In the case at bar the acts of the appellant made such a bill necessary to render effectual the original decree, and a supplemental bill should be used in preference to an original bill whenever it can equally subserv the purpose of justice.

Allen v. *Taylor*, 3 *N. J. Eq.*, 435.

But we are told that, no matter how advisable or proper a supplemental bill may be, it is too late to file it after the original cause has been carried into the appellate court. And this contention is based on the theory of the removal of the record.

Can this position be sustained? We think not.

Lord Eldon, in Huguenin *v.* Baseley, 15 Ves. Jr., 180, 182, says: "A writ of error stayed proceedings, and upon the ground that has been mentioned by Sir Samuel Romilly, that the record is, in theory, supposed to be in the superior Court, brought there by the Chief Justice for the purpose of being referred to. * * * What was the law with reference to this point upon appeals from the Court of Chancery it is very difficult to state positively. Now, however, it is settled by the highest authority—that of the House of Lords itself—that an appeal from a court of equity to the House does not stay execution of the decree." (See Warden of St. Paul's *v.* Morris, 9 Ves. Jr., 316.) We quote this to show what was thought of the theory in the English Chancery. And under our own practice the proceedings below are not stayed on any theory of the removal of the record, but only by a statutory provision upon the giving of a supersedeas bond. If an

appeal does not operate *ipso facto* as a stay of proceedings in the court below, but only when the statutory conditions required to render it a supersedeas have been complied with, then it follows that such stay is not based on any theory that the record has been removed to the upper court, and that there is nothing, therefore, for the court below to exercise its jurisdiction upon. The stay is based upon the statutory supersedeas, and extends only so far as required by such supersedeas.

This supersedeas resting not on a theory, but on the statute, the jurisdiction of the court below is suspended by appeal only as to the matter appealed from; but it is not totally suspended, so as to prevent (on the theory that nothing is left in the court below), a proceeding as to any other matter in the cause.

Cf. Hart v. *Mayor*, 3 *Paige*, 381, 383.

Even an appeal from a decree granting, refusing or dissolving an injunction does not disturb its operative effect.

Where a reference is directed to state accounts the appeal shall not stay it.

Nerot v. *Burnand*, 2 *Russ.*, 56.

In Woodward *v.* Woodward, Dick., 33, the defendant appealed from a decree pronounced in the original cause. Before it was brought on the plaintiff filed a supplemental bill to carry the decree into execution, apprehending that he had not proper parties to the decree when pronounced; the defendant demurred (*inter alia*), for that the appeal was not determined; the demurrer was overruled.

As to the allowance of the amendments to the bill, it is well settled that the decision of a court below allowing an application to amend will not be reviewed by appellate court.

Chirac v. *Reinicker*, 11 *Wheat.*, 280, 302.

No objection that the bill was multifarious was made at the hearing, and it can not be raised now. Besides, it is within the discretion of the court to decide whether or not a bill in equity is multifarious in its nature. The objection of multifariousness raises merely a question of convenience in conducting the suit, and the court in dealing with it is simply called upon to exercise its discretion, and, as discretionary, it is, of course, not reviewable.

Singer Manuf. Co. v. *Springfield Co.*, 34 *Fed. Rep.*, 393.
Bolles v. *Bolles*, 44 *N. J. Eq.*, 385, 388.

We are content to leave with this Court without further discussion the question of the correctness and equity of the decree below on the merits as based upon the testimony and the report of the Master. The former adjudication, and the opinion of this Court therein, as well as the opinion of the Court below, enable us to do this.

This Court, when it comes to consider the acts and explanations of the directors and officers of the railway company, as set out in the record (*Rec. p.* 25, 134, *et seq.*), will recall these words from its opinion in *Beardsley* v. *Beardsley:*

"Obviously, he (J. D. Beardsley,) understood that two-thirds of Alderman's interest passed to the appellee (P. Beardsley). Suppose Alderman had not sold, can it

be doubted that equity would regard them as jointly the owners of this property although their ownership was evidenced by separate shares of stock. Would equity tolerate any transaction by which appellant securing the influence of a few shares of stock held by the nominal directors, should obtain bonds or contracts by which the value of the stock would be substantially destroyed, and he become the real owner? Bonds issued might be valid in law and apparently prior to the stock; contracts might give superior rights; yet is it not clear that equity would interfere if he, by collusion with the resident directors, attempted to ignore Alderman and create in himself a supremacy of ownership? That which is true when there was equality of ownership between himself and Alderman is also true when by a subdivision of Alderman's interest, a like ownership as between himself and his brother was established on a different basis."

We respectfully submit that the decree appelled from should be confirmed.

JOHN J. JOYCE,

EDWARD H. MURPHY.

Of Counsel with Appellee.